SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 166

FEDERAL COMPRESS & WAREHOUSE COMPANY AND NEW AMSTERDAM CASUALTY COMPANY OF NEW YORK, APPELLANTS,

vs.

E. R. McLEAN, SHERIFF AND TAX COLLECTOR, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

INDEX

	Original	Print
Proceedings in supreme court of Mississippi	1	1
Praecipe for transcript of record	3	1
Assignments of error	5	1
Order allowing appeal	7	3
Order sending up exhibits in original form	14	3
Bond on appeal (omitted in printing)	15	
Record from circuit court of Bolivar County	16	4
Declaration	16	4
Exhibit "B"—Warehouseman's bond	32b	17
Exhibit "C"—Warehouseman's license	32c	22
Exhibit "D"—Regulations of Secretary of Agriculture under Warehouse Act	32d	23
Exhibit "E"—Warehouse receipt	32e	70
General issue plea	34	71
Agreement as to agreed statement of facts	35	71
Order permitting non-suit as to all defendants except McLean, sheriff, etc	36	72
Agreed statement as to facts	37	73
Exhibit "A"—Plat showing property involved	50a	84

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1933

	Original	Print
Exhibit "B"—Agreement of February 1, 1930	51	85
Exhibit "C"—Cashier's memorandum	76a	95
Exhibit "D"—Weight sheet, waybill, and shipping order	76b	96
Exhibit "E"—Warehouse receipt	76c	103
Exhibit "F"—Shipping order	76d	104
Exhibit "G"—Bills of lading	76e	105
Exhibit "H"—Waybills....(omitted in printing)	76f	
Exhibit "J"—Freight tariff	76g	109
Exhibit "K"—Statement as to cotton production	77	119
Exhibit "L"—Statement as to cotton consumption	78	120
Judgment	79	120
Bond on appeal.....(omitted in printing)	81	
Opinion, Smith, J	82	122
Judgment	86	124
Clerk's certificate.....(omitted in printing)	87	
Statement of points to be relied upon and designation of parts of record to be printed	88	125

[fols. 1-3 & 4]

IN SUPREME COURT OF MISSISSIPPI

No. 30543

FEDERAL COMPRESS & WAREHOUSE COMPANY et al.

v.

E. R. McLEAN, Sheriff

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed May 8, 1933

To the Honorable Tom Q. Ellis, Clerk:

The appellants, Federal Compress & Warehouse Company, and New Amsterdam Casualty Company of New York, Surety on appeal bond, having perfected their appeal, you will please, in making your record, include the following:

1. Declaration. (Omit Exhibits A, F and G; Exhibits B, C, D and E are sent up under Rule in original form.)
2. General Issue Plea.
3. Agreement of parties (page 53).
4. Order as to nonsuit.
5. Agreed statement as to Facts, including Exhibits B, K and L. (Other Exhibits being sent up under rule in original form.) (Exhibit B being agreement between Railroad and appellant; K and L cotton production, etc.)
6. Final Judgment, page 170.
7. Appeal bond.
8. Judgment and Opinion of Supreme Court of Mississippi.
9. The appellate proceedings herein.

Marcellus Green, Sam W. Green, Forest B. Jackson,
Attorneys for Appellant.

[File endorsement omitted.]

[fol. 5] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 8, 1933

Now come Federal Compress & Warehouse Company and New Amsterdam Casualty Company of New York, Surety

on Appeal Bond, and assign error in the above entitled cause, as follows:

1. The State Court erred in holding that the defendant, appellant, was not liable to appellee for all amounts sued for, and in entering judgment for appellee, in this, that:

(a) In so far as that sought to be recovered was a tax upon said compress the said tax was, is and always has been a direct burden upon interstate commerce, in this (1) said compression is an act of interstate commerce; (2) the price of compression is paid out of the through rate collected by the carrier for the service rendered by plaintiff, appellant, for conservation of carrier's capacity in transportation of cotton, in interstate and foreign commerce.

2. As to the tax upon the warehouse, said demand of the appellant should have been sustained, because:

(a) Said warehouse as operated was and is a Federal instrumentality, and not subject to State privilege taxation, and exempt therefrom under the Federal Constitution.

(b) Said warehouse is an instrumentality of interstate commerce, and as such exempt from State taxation, in this, that said privilege taxation thereupon imposed is a direct burden upon interstate commerce.

3. The appellant was denied by the judgment rendered the protection to which it was entitled under the Commerce Clause of the Federal Constitution, both as to the compress operation and the warehouse operation of the plaintiff, both [fol. 6] of said operations being immune, pursuant to the Federal Constitution, from State taxation for privilege tax purposes, and the State was without authority to prohibit the appellant from therein engaging without obtaining as a requisite the State's assent thereto.

4. The State Court erred in not declaring said statutes and each of them unconstitutional, as in conflict with the Federal Constitution, especially the Interstate Commerce Clause thereof and the equal protection clause thereof, in this, that said statutes and each of them whereunder said taxes were exacted unduly burdened interstate commerce, and denied to appellant the equal protection of the law and deprived it of its property without due process of law, said statutes so thus unconstitutional being Section 57 and Section 63 of Chapter 88, Laws of 1930.

5. And for other causes to be assigned.

Wherefore, etc.

Marcellus Green, Sam W. Green, Forest B. Jackson, Attorneys for Appellant.

[File endorsement omitted.]

[fols. 7-13] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 8, 1933

On motion of the Federal Compress & Warehouse Company and New Amsterdam Casualty Company of New York, surety on its appeal bond, it is ordered that an appeal to the Supreme Court of the United States, to be held in the City of Washington, D. C., from the judgment heretofore filed and entered herein on the 3rd day of April, 1933, be and the same is hereby allowed, and that a certified copy of the transcript of the record and all proceedings herein be forthwith transmitted to the said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of Five Hundred ($500.00) Dollars, to be approved by the Clerk of this Court.

This May 8, 1933.

Sydney Smith, Chief Justice Supreme Court of Mississippi.

[File endorsement omitted.]

[fol. 14] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER SENDING UP EXHIBITS IN ORIGINAL FORM—Filed May 8, 1933

On Motion of appellants, it is ordered that the following exhibits be sent to the United States Supreme Court in the

original form, for the reason the same are necessary as a part of the record and same cannot be gotten before the Court in any other satisfactory form:

To the declaration:

Exhibit B—Warehouseman's license, and bond.
Exhibit C—do.
Exhibit D—Regulations Secretary of Agriculture.
Exhibit E—Warehouse Receipt.

To the agreed statement of facts:

Exhibit A—Plat showing property involved.
C—Cashier's Memorandum.
D—Weight Sheets.
E—Warehouse Receipts.
F—Shipping Order.
G—Bills of Lading—Export through.
H—Transit Freight Waybill.
J—Tariff.

Ordered this the 8th day of May, 1933.
Sydney Smith, Chief Justice Supreme Court of Mississippi.

[File endorsement omitted.]

[fol. 15] Bond on appeal for $500.00, approved and filed May 8, 1933, omitted in printing.

[fol. 16] In Circuit Court, Second Judicial District, Bolivar County, Mississippi

No. 4310

Federal Compress & Warehouse Company, Plaintiff,

vs.

E. R. McLean, Sheriff and Tax Collector, et al., Defendants

Declaration—Filed Oct. 17, 1932

Comes Federal Compress & Warehouse Company, a corporation under the Laws of Delaware, herein called "Plain-

tiff", and complains of E. R. McLean, Sheriff & Tax Collector of Bolivar County, Mississippi, a resident and citizen thereof, and herein called "Sheriff" and/or "Defendant", and Mrs. E. R. McLean, J. L. McLean, J. L. Smith, J. P. Wiggins, Wm. Berger, Mrs Wm. Berger, R. E. Jackson, C. W. Brown, Jr., J. P. Manning, J. H. Ingraham, A. E. Graham, E. R. Nobles, H. M. Laudig, W. M. Merritt, Ed B. Hill, C. J. Craggs, E. H. Green, J. C. Windham, Nelson H. Floyd and S. B. Johnson, sureties on the official bond of said defendant, herein called "Sureties" and/or "defendants", and for cause of action states;

I

Said McLean is Sheriff and Tax Collector of Bolivar County, Mississippi, having been heretofore, prior to May 1, 1932, duly elected and qualified, and prior to that date executed and delivered his official bond in the form of Exhibit "A" hereto annexed and made part hereof as if fully copied herein, in accordance wherewith said Sureties, along with said McLean, became liable to plaintiff for that herein claimed.

Plaintiff since 1925 has owned and operated a cotton warehouse, licensed and bonded under the United States [fol. 17] Warehouse Act, at Cleveland, Mississippi, having a capacity of more than 20,000 bales, but less than 35,000 bales of cotton; and likewise, and as a part of said warehouse operation, a compress, where cotton is compressed, of more than 30,000 bales and less than 40,000 bales capacity per annum, and has so had since 1925 and will continue so thus to have for many years, and especially for the period May 1, 1932, to and including May 1, 1933, the time covered by this suit, and whereasto unless specially herein otherwise specified the averments herein contained are made.

As owner of such warehouse and compress and of the land, building and machinery, the plaintiff has been lawfully assessed by the State of Mississippi, the County of Bolivar and the City of Cleveland with property taxes, and by the Levy Board for the protection rendered with levee taxes, and these taxes have heretofore been regularly paid, and therefore plaintiff is entitled to the protection of the laws.

Cotton is the great export crop of the State of Mississippi, being sent in both interstate and foreign commerce.

Less than 1% of it is consumed within Mississippi and more that 99% is sent therefrom through the instrumentalities of warehouses and compresses hereinafter delineated, and therefore said cotton is planted and harvested, it being well known that according to the custom of the country and the intention of those who dwell therein that said expert will occur just as it has been occurring for many years last past, and will continue thus to occur so long as the customs of the country remain as they are.

Plaintiff avers that in the recent case of Mathews v. Rodgers, U. S. Advance Sheets, Oct. Term, 1931, page 271, the facts as to handling of cotton at Clarksdale, which are the same as at Cleveland were thus adjudged to exist and herein said facts are adopted as part and parcel of this declaration, as follows:

"The said cotton, when it ripens in the field, is picked by [fol. 18] hand, put through a ginnery, by the process of which machine the lint is removed from the seed, and the lint cotton (in which plaintiffs deal exclusively as hereinafter shown) is wrapped and tied into bales weighing approximately five hundred pounds each. A bale of cotton, when wrapped and tied at the gin, is approximately five feet in length, three and one-half feet in width, and four and one-fourth feet in height.

"By general and uniform custom, bales of cotton from the gin are transported by rail or otherwise, and hereinafter described, to compreses. A Compress is a combination storage warehouse and plant equipped with machinery designated to press bales of cotton, under extremely high pressure, for the purpose of reducing its size. A Bale, after compression, is only about eighteen inches thick, the purpose of compression being that the railroads and carriers by water in interstate and foreign commerce, as hereinafter described, are enabled to load into cars and ships, for such carriage, approximately three times as much cotton after compression as otherwise would be possible. Approximately twenty-five per cent of the cotton which is bought and sold upon said market in Clarksdale, and is transported to the compresses by automobile, truck, or wagon, and delivered by that means to said compresses. Approximately seventy-five per cent of said cotton is transported to said compresses by rail over lines of the Yazoo & Mississippi Valley Railroad Company, a common carrier engaged in in-

terstate commerce, and which is the only such common carrier doing business at said market.

"At Clarksdale, there are two compresses owned and operated by a corporation existing under the Laws of the State of Delaware, to-wit: The Federal Compress & Warehouse Company. Said Federal Compress and Warehouse Company has, with reference—both and each of said compresses maintained at Clarksdale, complied with all of the terms and provisions of an act of Congress, the short title [fol. 19] of which is the "United States Warehouse Act", being Chapter 10, Title 7, U. S. C. A. The said Federal Compress and Warehouse Company complied with the terms and provisions of the said 'United States Warehouse Act' for the reason that all of said cotton stored in the said compresses and/or warehouses at Clarksdale, Mississippi, and handled in the manner above described was and is cotton stored and handled therein for interstate and/or foreign commerce, and the power of Congress to affect, by provisions of its said act, the said cotton so handled and stored arises only from the fact, that said cotton and all of it is stored and handled for interstate and foreign commerce, and Congress, in exercising the power granted it by said Article 1, Section 3, of the Constitution of the United States, over the said cotton, has thereby reserved to itself exclusive jurisdiction, power, and control thereof, and divested the State of Mississippi, of any power, if any it might have had, to control and/or regulate the buying, selling and/or shipping of said cotton.

"When cotton is delivered to said compresses, the said Federal Compresses & Warehouse Company issues to the owner thereof warehouse receipts, which receipts comply in all things with the terms and provisions of said Act of Congress. Said cotton is universally sold upon the market by transfer and delivery of said warehouse receipts in accordance with the terms of said Act of Congress, and actual samples taken from said bales of cotton; said warehouse receipts being the evidence of the ownership of such cotton.

"At Clarksdale, there exists an active market for the purchase and sale of cotton between farmers raising said cotton and plaintiffs and others engaged in like business, who are purchasing the same with the intention and purpose of selling and transporting same in interstate and foreign commerce, which is and was and has been a uni-

versal custom and course of business for more than twenty years past. The price at which said cotton is sold upon [fol. 20] said market at Clarksdale, however, is determined by the value of such cotton upon certain cotton exchanges maintained, respectively, in the Cities of New Orleans, Louisiana, Chicago, Illinois, and New York, New York; and there are maintained in the City of Clarksdale, Mississippi, officers of brokers who receive daily by wire, for periods of approximately five hours each day, continuous quotations from such exchanges which fix and determine the price at which cotton is sold upon said Clarksdale market. All of said cotton, however, is bought, by plaintiffs with the uniform purpose and intention, except the 'overs' hereinafter mentioned (which is and has been the universal course of business), to transport the same in interstate and foreign commerce to the mills located in the states upon the Atlantic seaboard, to-wit: Georgia, South Carolina, North Carolina, and Tennessee; and the mills of the New England States, to-wit: Massachusetts, Rhode Island, and Connecticut; and the mills of foreign countries. None of said cotton is spun or utilized within the confines of the State of Mississippi, or sold to or purchased by any consumer within the confines of the State of Mississippi.

"Approximately seventy-five per cent of said cotton is delivered by rail to said compresses at Clarksdale, and upon the delivery of such cotton to the said carrier by rail at points outlying said City of Clarksdale, said cotton thereupon is placed in and thereafter remains in the channels of interstate commerce. The said carrier transports by rail the said cotton to the said compress at Clarksdale, and it is there concentrated merely for the purpose of compression and for the purpose of awaiting the termination of its final point of destination outside the State of Mississippi. When the destination of such cotton is determined, the said carrier loads the same out on instructions of the then owner, after having the said cotton compressed, and [fol. 21] charges the through freight-rate from the point of origin to the point of destination outside of the State of Mississippi, instead of charging the combined rate for carriage in intrastate commerce from the point of origin to Clarksdale, plus the charge for carriage in interstate commerce from Clarksdale to the point of destination. As for instance: the rate for the carriage in intrastate com-

merce from Sumner, Mississippi, to Clarksdale, Mississippi, a distance of approximately twenty miles, of an uncompressed bale of cotton is $1.28 per Hundred Pounds. The through rate for the carriage of a compressed bale of cotton from Clarksdale, Mississippi, to Fall River, Massachusetts, is $1.28 per hundred pounds. The said carrier, instead of charging the combined rate above outlined for carriage from Sumner, Mississippi, to Fall River, Massachusetts, charges the through rate, which is the intermediate rate, as if there had been no interruption of shipment from Sumner, Mississippi, to Fall River, Massachusetts. The said charges are made by said carriers in accordance with the regulations prescribed by the Interstate Commerce Commission in pursuance of the act of Congress creating said commission and the several amendments thereto.

"The general and uniform custom and course of business in handling said cotton upon said market is had and done in the following manner:

"The farmer causes warehouse receipts, when the cotton is delivered to the compress, to be issued and delivered either directly to himself or his agent, commonly called a cotton factor. Upon the Clarksdale market, there are approximately twenty-five buyers and shippers who are engaged in the sole business of buying, selling, and shipping cotton in interstate and foreign commerce. The farmer or the factor causes the actual bales or cotton to be sam- [fol. 22] pled, and the cotton is sold to the plaintiffs and other buyers, sellers and shippers upon said market, upon the basis disclosed by the character of the samples of said cotton, and by endorsement and delivery of the said cotton receipts evidencing the ownership of the same, the price therefor being governed, by the markets in New York, Chicago and New Orleans. It is uniformly known and understood by the farmer, cotton factor, and the buyer that the buyer is purchasing said cotton solely for the purpose of causing the same to be transported by rail and/or water to said points in the United States and foreign countries where mills convert said cotton into textile products as aforesaid. No cotton that is bought and/or sold upon the Clarksdale market is utilized in the State of Mississippi, but all of said cotton, as aforesaid, is transported for consumption in interstate and foreign commerce.

"The general and uniform custom among buyers, shipper, and sellers, as well as the general course of business is that a buyer enters into a contract for either the future or immediate delivery of a certain number or bales of cotton of a certain class, grade, and staple, obligating himself by contract to deliver to a mill in a foreign state or country such cotton at a given price. Thereupon, such buyer will go upon the said market at Clarksdale, and purchase cotton of the kind and character which he is obligated to his customer to deliver, and will cause the delivery of said cotton in interstate and/or foreign commerce in accordance with the terms of his contract. A very small proportion of the cotton purchased by shippers, and cotton buyers (not exceeding ten per cent) is bought when no contract for the sale thereof exists as hereinabove alleged, but, in such cases, it is bought with the sole anticipation and intention on the part of the buyer (which intention is fully known [fol. 23] both to the buyer, farmer, and/or factor) to procure a sale of said cotton to some foreign cotton mill or foreign cotton merchant, and to cause the same to be transported in interstate and/or foreign commerce, as aforesaid, at such time as market conditions will justify. Plaintiffs have engaged in the business of buying and selling cotton in the manner aforesaid upon the markets hereinabove described for periods ranging from five to more than twenty years. The business of plaintiffs is commonly known as that either of a cotton buyer, cotton shipper, or words of like import.

"In the purchase of cotton by the plaintiffs as above set forth a small proportion of the cotton was purchased varying from one per cent to ten per cent constituting what is known in the cotton trade as 'overs or cotton which does not fit' said overs arising from reclassification, rejections and preparation. As an incident to the purchase and shipment of this cotton by the plaintiffs to its customers situated in foreign states and countries, the plaintiffs sell locally this small percentage of cotton for which they have no use, but which said latter cotton is eventually shipped out of the State of Mississippi by other cotton buyers of the same class as plaintiffs for delivery on orders which they may have for cotton of this particular grade, type or staple. Other and additional factors are shown by a stipulation entered into by the parties and filed herein.

"Under the above and foregoing facts plaintiffs are engaged in interstate commerce, and the State of Mississippi being unauthorized to levy a privilege tax on the privilege of engaging in said business, notwithstanding by its duly constituted officers is threatening and undertaking to burden or regulate interstate commerce in contravention of the Commerce Clause of the Constitution of the United States, and therefore the said Act, as its officers are construing and [fol. 24] attempting to enforce the same insofar as it undertakes to exact a privilege license from the plaintiffs so engaged in the business aforesaid, is unconstitutional and void".

Plaintiff reiterates that each and every fact so thus found existed heretofore prior to 1916 and has continuously existed since that date and now exists, and well recognizing the movement of said agricultural commodity, to-wit: cotton, in interstate commerce under the customs of the country, the Congress of the United States heretofore upon August 11, 1916, passed the United States Warehouse Act, whereunder and whereby it defined a warehouse as "every building, structure or other protected enclosure in which any agricultural product may be stored for interstate commerce."

Plaintiff avers that beginning in 1916 and continuing to date cotton for interstate commerce has been stored by this plaintiff and its predecessor in title in said warehouse, where for a license under said Act had been continuously in effect, a copy of which, and the bond guaranteeing the performance thereunder are hereto annexed, marked Exhibits B and C, respectively, and made a part hereof as if fully copied herein.

Said United States Warehouse Act, hereinafter called "statute" and/or "chapter," authorized the Secretary of Agriculture to investigate the storage, warehousing and classification according to grade or otherwise, weighing and certification of agricultural products, and beginning in 1916 and continuing to date, said Secretary of Agriculture has so done as herein set out as to said warehouse, and that this plaintiff and its predecessor in title, recognizing the advantages of being licensed by the United States in the performance of its obligations as a Warehouseman in the movement of said interstate commerce, made application to the

Secretary of Agriculture for a license thereunder, and pursuant to said Chapter, the Secretary of Agriculture [fol. 25] ma-y years since and continuously since that date determined that the warehouse of the plaintiff in the City of Cleveland was suited and suitable for the storage of agricultural products, to-wit, cotton, and did classify said warehouse of the plaintiff in accordance with its ownership, location, surrounding, capacity, condition and other qualities, and having so done, and finding a full compliance with said chapter in the business thus done by plaintiff and its predecessor, issued, beginning in 1916, to this plaintiff, a license to conduct said warehouse as a Federal Warehouse in accordance with the limitations of said chapter and with the duties thereunder prescribed.

This plaintiff agreed to and has subsequently complied and abided by all of the terms of said Chapter and the rules and regulations prescribed therein since 1916. A copy of the present rules are hereto annexed, marked Exhibit "D" and make a part hereof as if fully copied herein.

That for compliance with said Chapter and the rules and regulations prescribed by the Secretary of Agriculture, a good and sufficient bond has been filed covering the operations of this plaintiff throughout the entire State of Mississippi, and especially at Cleveland, Mississippi, binding this plaintiff and the surety on its bond for the due and proper performance of all obligations prescribed by said Chapter and the rules and regulations of the Secretary of Agriculture and of such additional obligations as may be assumed by plaintiff in said Interstate Commerce under contracts with the depositors of cotton in said Warehouse.

Plaintiff has, since 1925, and its predecessor since 1916, strictly complied with the provisions of said Chapter and all rules and regulations of the Secretary of Agriculture, and was upon May 1, 1932, and for a long time prior there- [fol. 26] to, to-wit, 1925, a licensed Federal Warehouse under a license issued by the United States and was then and has been continuously since and instrumentality of Interstate Commerce, and therein issued its receipt for cotton placed in its custody, the form of said receipt being that annexed hereto as Exhibit "E" and made a part hereof as fully as if copied herein.

Plaintiff has not in any way deviated during all of said time from the requirements of said Chapter, nor from the

regulations and rules prescribed by the Secretary of Agriculture, and that during the entire period said receipts were issued by plaintiff as an instrumentality of the United States in Interstate Commerce.

Said receipts so issued complied with the requirements of said Chapter and of the rules and regulations issued by the Secretary of Agriculture, and that pursuant to the requirement of said Chapter and of its bond, this plaintiff has kept in a place of safety complete and perfect records of all agricultural products, to-wit, cotton, stored therein and withdrawn therefrom and of all warehouse receipts issued in return and cancelled and has continuously reported to the Secretary of Agriculture concerning such warehouse at Cleveland, its condition, contents, operation and business in such form and at such time as the Secretary of Agriculture did require, and has conducted said warehouse under said Chapter from, to-wit, 1925, up until the present time and especially since May 1, 1932, and will continue to so conduct said warehouse in strict compliance with said Chapter and the rules and regulations made thereunder.

Thereasto the said Secretary of Agriculture is authorized to and has heretofore caused examinations to be made of the products stored, to-wit, cotton, and likewise has ex- [fol. 27] amined and will continue so to do, all books, records, papers and accounts of warehouse, and likewise has made full rules and regulations pursuant to the power of Congress in virtue of the express provisions of the Federal Constitution.

Plaintiff therefore avers that its said warehouse has been and is a licensed Federal instrumentality in Interstate and foreign commerce in cotton and has been heretofore since 1925, and is still such instrumentality, and plaintiff avers that such warehouses are necessary and essential as instrumentalities for the origination, preservation and conservation of said Interstate Commerce, and that as part of said warehouses there is usually, and in this case, actually, a plant equipped with machinery designated to press said bales of cotton for the purpose of reducing the size so that movement may be had in interstate and foreign commerce.

When cotton is tendered to plaintiff at said plant, it is received by plaintiff solely in its capacity as a Federal licensed warehouse and not otherwise, and therefor is issued

said form or receipt approved by and prescribed by the Secretary of Agriculture, the same being strictly in accordance with the provisions of said chapter, and thereunder the cotton continues to move in interstate commerce.

Congress was lawfully authorized to pass said statute and the Interstate Commerce Act as well, with its amendments, by reason of the movement of cotton in interstate and foreign commerce, and this has been well recognized continuously. Plaintiff complied with all of the terms of said United States Warehouse Act and the rules and regulations prescribed thereunder, and according to the universal custom of the country, said cotton is stored solely for interstate and foreign commerce, and none of it, so far as plaintiff knows, for intrastate movement. The power of [fol. 28] Congress to affect by provisions of said Act and by the Interstate Commerce Act the said cotton so handled and stored thus arises from the fact that it and all of it at May 1, 1932, and prior thereto, as well as since then, has been handled and stored by the plaintiff for interstate and foreign commerce and in such commerce, and that the Congress in exercising said power granted by the Constitution has reserved to itself exclusive power and jurisdiction, and divested the State of Mississippi of any power thus to tax the interstate and foreign movement of cotton by privilege tax, and especially the business of this plaintiff of a Federal Warehouseman under said United States Warehouse Act; that upon the receipt of said cotton plaintiff thereupon issues to the party so delivering its warehouse receipts, as authorized by said Act of Congress and by the rules and regulations of the Secretary of Agriculture, and this cotton so thus placed is universally sold upon the market by the transfer and delivery of said warehouse receipts, in accordance with the terms of said Act of Congress and the rules and regulations of the Secretary of Agriculture, said warehouse receipts so thus issued being sole evidence of ownership therein, and that said warehouse receipts represent said movement of said cotton.

Plaintiff avers that all cotton by it handled is in interstate and/or foreign commerce and is handled strictly in said Warehouse as found by the Federal District Court, in said Matthews v. Rodgers, sitting as a Court to determine the facts as to cotton, and that plaintiff says that as a Federal Instrumentality in interstate commerce under the

United States Warehouse Act, the State of Mississippi has no power to prohibit the plaintiff from carrying on said business and denying it the right so to do, this being a Federal Privilege and derived from the Constitution of the [fol. 29] United States, and that it was and is unconstitutional for the State of Mississippi to exact of and from the plaintiff for the exercise of this Federal right a privilege tax in the sum of $75.00 and to prohibit plaintiff from engaging in said interstate and foreign commerce without the prepayment of said privilege tax, and failing to pay said privilege tax for the exercise of said Federal privilege, to make of this plaintiff a common criminal and to subject it and its officers to fine and imprisonment.

Notwithstanding that this plaintiff is such Federal instrumentality, the State of Mississippi has so done, and there in effect upon May 1, 1932, and continuously since, its certain privilege tax statute whereunder this plaintiff was and still is prohibited from discharging this federal function wherefor it has been lawfully licensed unless it pay to the State of Mississippi therefor annually the sum of $75.00, its capacity being as hereinbefore set forth, and that unlawfully, upon May 1, 1932, under said Act of the State of Mississippi, said McLean, as Sheriff and Tax Collector unlawfully exacted of this plaintiff $75.00 for the conduct of said warehousing business, as hereinbefore delineated, and then and there the State of Mississippi threatened, and unless said payment would have been made, would have declared and adjudged the plaintiff guilty of a crime for the conduct of said lawful interstate business, which it, plaintiff, had a right to do in virtue of the Constitution of the United States.

This plaintiff, on May 1, 1932, under pains and penalties threatened, as aforesaid, and to avoid being charged common criminal, then and there paid to said McLean, as Sheriff and Tax Collector, under protest, said sum of $75.00, advising the said McLean that the amount was paid [fol. 30] under protest and was exacted unlawfully, and that a copy of the receipt so issued by McLean therefor is hereto annexed, marked Exhibit "F", and made a part hereof as if fully copied herein. Said McLean as such Sheriff and Tax Collector, had no authority under the Constitution of the United States, to collect said sum or any part thereof, in this that that solely done by plaintiff at

said warehouse was and continues to be interstate commerce as licensed by the Federal Government, and by reason of such license and said interstate commerce, there accrued unto plaintiff the right to have, demend and recover of and from said McLean, as Sheriff and Tax Collector, and from the surety on his bond, Exhibit A, said sum of $75.00.

Wherefor, plaintiff hereby sues and demands judgment.

II

And for a further, additional and second cause of action, plaintiff reiterates and re-alleges by adoption to save prolixity, each and everything hereinbefore set out in the first count down to the paragraph beginning "Notwithstanding that this Plaintiff is such Federal Instrumentality", and here realleges every averment in said first count, and adds thereto the following:

Plaintiff says that the business of compression of said cotton as hereinbefore defined was and is interstate commerce, and its charges therefor are solely paid by the interstate carrier out of the interstate rates, the privilege of compression being published as a privilege existing under [fol. 31] the Act to Regulate Commerce, and the amendments thereto, and the plaintiff says that without said compression, cotton may not move in interstate commerce without undue burden, in this that due to its density, it would occupy so much space as that it could not be economically carried, and has to be compressed, and by reason of compression, occupies approximately one-third of the amount of space that would otherwise be the case, and plaintiff says that to prohibit com*r*pession would be to unduly burden interstate commerce.

Plaintiff says that this method of compression was and has been well known for many years last past and that said compression is had only for cotton moving in interstate and foreign commerce and not for cotton moving in the State of Mississippi, and yet, notwithstanding the right of the interstate carriers to so thus move cotton in interstate commerce, the State of Mississippi unlawfully sought and still seeks to exact from said carriers and from this plaintiff a privilege tax for the conduct of said compress and disregarding the rights of this plaintiff under the Federal

Constitution as to Interstate Commerce, said State has undertaken to impose a privilege tax upon said compress at Cleveland and through its officers, E. R. McLean, Sheriff & Tax Collector, has unlawfully exacted of and from this plaintiff the payment of the sum of $400.00 for the doing of said compress business at Cleveland where plaintiff owns said compress, and that pursuant to said exaction, whereas to plaintiff by adoption makes the same averments as were made in Count I hereof as to warehousing, the plaintiff was compelled to pay and did pay under protest said privilege [fols. 32 & 32a] tax of $400.00, as shown by the privilege tax receipt hereto annexed, marked Exhibit "G" and made part hereof as if fully copied herein; said payment having been made under protest as hereinbefore set out, an action to recover the same accrued against said McLean for his unlawful act and against the surety on his official bond, and therefor this plaintiff hereby sues and demands judgment.

Wherefore, said defendants being thus indebted to said plaintiff in said sum of $475.00, by reason of said illegal exactions hereinbefore delineated, undertook and promised to pay the same, but so to do have wholly failed and refused and have failed to pay any part thereof.

Wherefor plaintiff sues and demands judgment.

Green, Green & Jackson (Jackson, Miss.), Attorneys for Plaintiff.

[fol. 32b] EXHIBIT "B" TO DECLARATION

Department of Agriculture, Washington

Pursuant to Section 661, Title 28, of the United States Code, I hereby certify that the following and annexed are true, correct and compared copies of warehouseman's license No. 2-951, issued to Federal Compress & Warehouse Company of Wilmington, Delaware, under date of December 21, 1931, by the Secretary of Agriculture, to cover its cotton warehouse located at Cleveland, Mississippi; letter to Federal Compress & Warehouse Company, Memphis, Tennessee, dated June 1, 1932, notifying that company in accordance with regulation of the acceptance of its bond dated May 11, 1932, for Fifty Thousand Dollars ($50,000.00), and continuing its licenses in the State of Mississippi in effect

for a period of one year; and warehouseman's bond dated May 11, 1932, executed by Federal Compress & Warehouse Company, Wilmington, Delaware, as principal, and United States Fidelity & Guaranty Company, as surety, in the penal sum of Fifty Thousand Dollars ($50,000.00), on file in the Bureau of Agricultural Economics of the United States Department of Agriculture at Washington, D. C.

Witness my hand and the seal of the United States Department of Agriculture this 10th day of October, 1932.

C. F. Marvin, Acting Secretary of Agriculture. (Seal United States Department of Agriculture.)

[fol. 32b-1] W. A. Form No. 4 C, Corporation. General
M. M. C. 2-948

United States Department of Agriculture, Bureau of Agricultural Economics

United States Warehouse Act

(39 Stat., 486)

Warehouseman's Bond

Know all men by these presents, that we, Federal Compress & Warehouse Company, a corporation organized and existing under the laws of the State of Delaware, and having its principal place of business in the City of Wilmington, State of Delaware, and conducting the Federal Compress Warehouses, twenty-one (21) cotton warehouses, as per attached list, in the State of Mississippi, as principal, and the other subscriber hereto, as surety, are held and firmly bound unto the United States of America in the penal sum of Fifty Thousand Dollars ($50,000.00), for the payment of which, well and truly to be made, we bind ourselves, and our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 11th day of May, 1932.

The conditions of this obligation are such that,

Whereas, the above-bound principal has applied to the Secretary of Agriculture of the United States of America for licenses or a continuation of licenses for the conduct of cotton warehouses under the United States warehouse Act of August 11, 1916 (39 U. S. Stats. at L., p. 486), as amended, and the regulations for cotton warehouses prescribed thereunder; and

Whereas, the said principal has agreed, and does hereby agree, as a condition to the granting of the said licenses, to comply with and abide by the terms of the said United States warehouse Act and the regulations for cotton warehouses prescribed thereunder, so far as the same may relate to it; and

Whereas, the said United States warehouse Act provides that each warehouseman applying for a license to conduct a warehouse in accordance with the terms thereof shall, as a condition to the granting of the license, execute and file with the Secretary of Agriculture a good and sufficient bond to the United States, to secure the faithful performance of its obligations as a warehouseman under the terms of the [fol. 32b-2] said United States warehouse Act and the said regulations for cotton warehouses prescribed thereunder, and of such additional obligations as a warehouseman as may be assumed by it under contracts with the respective depositors of cotton in such licensed warehouse;

Now, therefore, if the said licenses or any amendments thereto are granted and said principal shall faithfully perform all of its obligations as a licensed warehouseman relating to transactions entered into during the period of one year commencing June 1, 1932, under the terms of the said United States warehouse Act and the regulations for cotton warehouses prescribed thereunder, and such additional obligations as a warehouseman as may be assumed by it during the period aforesaid under contracts with the respective depositors of cotton in such licensed warehouses, then this obligation shall be null and void and of no effect, otherwise to be and remain in full force and virtue.

In witness whereof, the said principal and surety have exceuted this instrument on the day and year above written.

Federal Compress & Warehouse Company, Principal,
by R. L. Taylor, President. (Corporate Seal.)

Witnesses to signature and seal of principal:

Name	Address
E. E. Barnes,	Memphis, Tennessee.
N. W. Pannill,	" "

United States Fidelity & Guaranty Company, Surety, by W. V. Ludlam, Attorney in Fact. (Signature Resident State Agent of Bonding Company), W. V. Ludlam. (Corporate Seal.)

Witnesses to signature and seal of surety:

Name	Address
Otho R. Smith,	Meridian, Miss.
L. S. Russell,	Meridian, Miss.

[fol. 32b-3] List of Warehouses Operated by the Federal Compress & Warehouse Company in the State of Mississippi and to be Covered by the Bond Furnished, under the U. S. Warehouse Act, by the said Company, Effective June 1, 1932

Town	County	State
Aberdeen	Monroe	Mississippi.
Canton	Madison	"
Clarksdale	Coahoma	"
Cleveland	Bolivar	"
Como	Panola	"
Corinth	Alcorn	"
Drew	Sunflower	"
Greenwood	Leflore	"
Grenada	Grenada	"
Holly Springs	Marshall	"
Inverness	Sunflower	"
Jackson	Hinds	"
Macon	Noxubee	"
Marks	Quitman	"
Moorhead	Sunflower	"
New Albany	Union	"
Ruleville	Sunflower	"
Shaw	Bolivar	"
Shelby	Bolivar	"
Tutwiler	Tallahatchie	"
West Point	Clay	"

[fol. 32b-4] Affidavit as to Principal

STATE OF TENNESSEE,
County of Shelby, ss:

On this 11th day of May, 1932, before me personally appeared C. C. Patten, to me personally known, who, being by me duly sworn, deposes and says: That he resides at Memphis, in the State of Tennessee; that he is the Asst. Secretary (Secretary) of the Federal Compress & Ware-

house Company, the corporation described in and which executed the foregoing bond as principal, and as such has custody of its records and seals; that said corporation was organized under the laws of the State of Delaware; that he knows the corporate seal of said corporation; that the corporate seal affixed to said instrument is such corporate seal and was thereto affixed by order of its board of directors; that R. L. Taylor is the president of said corporation and was duly authorized to execute said instrument on its behalf; and that deponent knows the signature of said officer and the signature affixed to such instrument is his signature.

(Signature of deponent) C. C. Patten, Asst. Secretary.

Subscribed and sworn to before me on the date above written. My commission expires Jan. 22nd, 1933. B. M. Hart, Notary Public. (Notary's Seal to be Placed Here.)

In accordance with the regulations for cotton warehouses under the United States warehouse Act, the foregoing bond is hereby approved. Done in the City of Washington this first day of June, 1932.

By direction of the Secretary of Agriculture.

C. W. Kitchen, Acting Chief, Bureau of Agricultural Economics. S. G. S.

[fols. 32b-5] Copy

June 1, 1932.

Federal Compress & Warehouse Company, Memphis, Tennessee.

GENTLEMEN: This is to advise that your bond dated May 11, 1932, in the amount of $50,000, given to secure your obligations as a warehouseman under the United States Warehouse Act, has been accepted and approved.

Your present licenses as listed below will continue in effect indefinitely upon condition that you furnish the required bond annually on or before May 31.

The capacities of the licensed warehouses remain fixed at the amounts indicated in each license and as set forth below. To store in excess of such amounts at any one time without

first securing permission from the Department is contrary to the regulations.

The license numbers, names, locations, and capacities of the warehouses covered by this bond are as follows:

License No.	Name of warehouse	Location	Capacity in bales of cotton
2- 948	Federal Compress Warehouse....	Aberdeen, Miss.....	10,000
2- 949	Federal Compress Warehouse....	Canton, Miss.....	26,000
2- 950	Federal Compress Warehouse....	Clarksdale, Miss.....	105,000
2- 951	Federal Compress Warehouse....	Cleveland, Miss.....	36,000
2-1071	Federal Compress Warehouse....	Como, Mississippi....	11,000
2-1072	Federal Compress Warehouse....	Corinth, Miss.....	28,000
2-1024	Federal Compress Warehouse....	Drew, Miss.....	18,000
2- 952	Federal Compress Warehouse....	Greenwood, Miss.....	40,000
2- 954	Federal Compress Warehouse....	Holly Springs, Miss...	18,000
2-1123	Federal Compress Warehouse....	Inverness, Miss.....	8,000
2- 955	Federal Compress Warehouse....	Jackson, Miss.....	35,000
2-1073	Federal Compress Warehouse....	Macon, Miss.....	12,000
2-1111	Federal Compress Warehouse....	Moorhead, Miss.....	4,000
2-1074	Federal Compress Warehouse....	New Albany, Miss....	15,000
2- 960	Federal Compress Warehouse....	Ruleville, Miss.....	20,000
2-1066	Federal Compress Warehouse....	Shelby, Miss.....	7,500
2-1099	Federal Compress Warehouse....	Tutwiler, Miss.....	8,000
2- 962	Federal Compress Warehouse....	West Point, Miss.....	11,000

Very truly yours, (S.) C. W. Kitchen, Acting Chief of Bureau.

[fol. 32c] EXHIBIT "C" TO DECLARATION

Copy

W. A. Form No. 3. General

United States Department of Agriculture

United States Warehouse Act

Amended License No. 2-951

Federal Compress & Warehouse Company, of Wilmington, Delaware, is hereby licensed in accordance with the United States Warehouse Act and the Regulations for cotton warehouses thereunder to conduct the Federal Compress Warehouse, located in Cleveland, County of Bolivar, State of Mississippi, and composed of the following:

Building No. 1, a one-story, four compartment (Nos. 1, 2, 3 and 4), frame warehouse, situated west of the main line of the Yazoo and Mississippi Valley Railroad; and

Building No. 2, approximately 180 ft. by 350 ft., which is a one-story, one-compartment, frame and iron-clad building, known as "Compartment No. 5". This building is situated on the west side of U. S. Highway No. 61 and west of Building No. 1 described above.

Said warehouseman is authorized to store not in excess of 36,000 bales at any one time.

This license is subject to modification, extension, suspension, or cancellation. It may be terminated by the Secretary of Agriculture any year should said warehouseman fail to furnish annually on or before May 31 such bond for the ensuing year as is required by the Act and Regulations.

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington this twenty-first day of December, 1931.

Arthur W. Hyde, Secretary of Agriculture. Countersigned: C. W. Kitchen, Acting Chief, Bureau of Agricultural Economics. (Seal United States Department of Agriculture.)

[fols. 32d & 32d-1] EXHIBIT "D" TO DECLARATION

United States Department of Agriculture

Service and Regulatory Announcements No. 76

(Agricultural Economics)

Regulations of the Secretary of Agriculture under the United States Warehouse Act of August 11, 1916, as Amended

Revised Regulations for Cotton Warehouses

Approved April 28, 1926

Issued May, 1926

[fol. 32d-2] United States Department of Agriculture, Office of the Secretary

By virtue of the authority vested in the Secretary of Agriculture by the United States warehouse act, approved

August 11, 1916 (39 U. S. Stat. L., pp. 446, 486), as amended, I, W. M. Jardine, Secretary of Agriculture, do make, prescribe, publish, and give public notice of the following rules and regulations, to be known as the regulations for cotton warehouses, and to be in force and effect until amended or superseded by rules and regulations hereafter made by the Secretary of Agriculture under said act. These rules and regulations shall supersede all rules and regulations issued under said act heretofore for cotton warehouses.

In testimony whereof I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington this 28th day of April, 1926.

W. M. Jardine, Secretary of Agriculture. (Seal.)

[fol. 32d-3] Regulations for Cotton Warehouses under the United States Warehouse Act

Regulation 1. Definitions

Words Import Singular or Plural

Section 1. Words used in these regulations in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

Terms Defined

Sec. 2. For the purposes of these regulations, unless the context otherwise require, the following terms shall be construed, respectively, to mean—

The Act

Paragraph 1. The Act.—The United States warehouse act, approved August 11, 1916 (39 U. S. Stat. at L., pp. 446, 486), as amended by acts of Congress approved July 24, 1919, and February 23, 1923.

Person

Paragraph 2. Person.—An individual, corporation, partnership, or two or more persons having a joint or common interest.

Secretary

Paragraph 3. Secretary.—The Secretary of Agriculture of the United States.

Regulations

Paragraph 4. Regulations.—Rules and regulations made under the act by the Secretary.

Bureau of Agricultural Economics

Paragraph 5. Bureau.—The Bureau of Agricultural Economics of the United States Department of Agriculture.

Linters

Paragraph 6. Linters.—As far as applicable these regulations shall include linters.

Warehouse

Paragraph 7. Warehouse.—Any building, structure, or other protected inclosure in which cotton is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which cotton is or may be stored.

Warehouseman

Paragraph 8. Warehouseman.—A person lawfully engaged in the business of storing cotton.

License

Paragraph 9. License.—A license issued under the act by the Secretary.

[fol. 32d-4] Licensed warehouseman

Paragraph 10. Licensed warehouseman.—A warehouseman licensed as such under the act.

Licensed warehouse

Paragraph 11. Licensed warehouse.—A warehouse for the conduct of which a license has been issued.

Licensed warehouseman's bond

Paragraph 12. Licensed warehouseman's bond.—A bond required to be given under the act by a licensed warehouseman.

Licensed classifier

Paragraph 13. Licensed classifier.—A person licensed under the act to classify according to grade or otherwise and certificate the grade or other class of cotton.

Licensed weigher

Paragraph 14. Licensed weigher.—A person licensed under the act to weigh and certificate the weight of cotton.

Cotton examiner

Paragraph 15. Cotton examiner.—An officer of the Department of Agriculture designated by the chief of the bureau for the purpose of hearing cotton appeals under regulation 9.

Receipt

Paragraph 16. Receipt.—A warehouse receipt.

Bale

Paragraph 17. Bale.—A bale or other package.

State

Paragraph 18. State.—A State, Territory, or District of the United States.

Regulation 2. Warehouse Licenses

Application forms

Section 1. Applications for licenses under sections 4 and 9 of the act and for modifications or extensions of licenses under section 5 of the act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the bureau, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the chief of the bureau shall find to be necessary to the consideration of his application by the Secretary.

Grounds for not issuing license

Sec. 2. A license for the conduct of a warehouse shall not be issued if it be found by the Secretary that the warehouse

is not suitable for the proper storage of cotton, that the warehouseman is incompetent to conduct such warehouse in accordance with the act and these regulations, or that there is any other sufficient reason within the purposes of the act for not issuing such license.

Net assets required

Sec. 3. The warehouseman conducting a warehouse licensed or for which application for license has been made, shall have and maintain above all exemptions and liabilities net assets liable for the payment of any indebtedness aris- [fol. 32d 5] ing from the conduct of the warehouse, to the extent of at least $5 per bale of the maximum number of bales that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the chief of the bureau, except that the amount of such assets shall not be less than $5,000, and need not be more than $100,000. In case such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. Any deficiency in the required net assets may be supplied by an increase in the amount of the warehouseman's bond in accordance with paragraph 2 of section 2 of regulation 3.

License shall be posted

Sec. 4. Immediately upon receipt of his license or of any modification or extension thereof under the act, the warehouseman shall post the same, and thereafter, except as otherwise provided in these regulations, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by the warehouseman are delivered to depositors.

Suspension, cancellation, or revocation of warehouse licenses

Sec. 5. Pending investigation, the Secretary, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written re-

quest and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary may, without hearing, suspend or cancel the license issued to such warehouseman. The Secretary may after opportunity for hearing when possible has been afforded in the manner prescribed in this section, suspend or cancel a license issued to a warehouseman, when such warehouseman (a) is bankrupt or insolvent; (b) has parted, in whole or in part, with his control over the licensed warehouse; (c) is in process of dissolution or has been dissolved; (d) has ceased to conduct such licensed warehouse; or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in subdivisions (a) to (e) of this section shall come into existence, it shall be the duty of the warehouseman to notify immediately the chief of the bureau of the existing condition. [fol. 32d-6] Before a license is suspended, revoked, or canceled for any violation of, or failure to comply with, any provision of the act or of these regulations, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or by an official of the Department of Agriculture designated for the purpose, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with regulation 10, section 4.

Return of suspended, revoked, or canceled warehouse license

SEC. 6. In case a license issued to a warehouseman terminates or is suspended, revoked, or canceled by the Secretary, such license shall be returned to the Secretary when requested. At the expiration of any period of suspension of such license, unless it be in the meantime revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the warehouseman to whom it was originally issued, and it shall be posted as prescribed in section 4 of this regulation; or in the discretion of the chief of the Bureau of Agricultural Economics a new license may be issued.

Lost or destroyed warehouse license

SEC. 7. Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same or a new number at the discretion of the Secretary.

Unlicensed warehousemen must not represent themselves as licensed

SEC. 8. No warehouse or its warehouseman shall be designated as licensed under the act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended, unrevoked, and uncanceled license for the conduct of such warehouse.

Regulation 3. Warehouse Bonds

Time of filing

SECTION 1. Unless the warehouseman has previously filed with the Secretary the bond required by section 2 of this regulation, he shall file such bond within a time, if any specified by the Secretary, said bond to cover all obligations arising thereunder during the period of the license.

Amount based on storage capacity

SEC. 2. Paragraph 1. Exclusive of any amount which may be added in accordance with paragraphs 2 and 3 of this section, the amount of such bond shall be at the rate of $5 per bale of the maximum number of bales that the [fol. 32d-7] warehouse will accommodate when stored in the manner customary to the warehouse for which such bond is required, as determined by the chief of the bureau, but not less than $5,000 nor more than $50,000. In case a warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the act and these regulations for the said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under this regulation.

Additional amount for deficiency in net assets

Paragraph 2. In case of a deficiency in net assets under regulation 2, section 3, there shall be added to the amount of the bond determined in accordance with paragraph 1 of this section an amount equal to such deficiency.

Additional amount for special conditions

Paragraph 3. In case the Secretary finds the existence of conditions warranting such action, there shall be added to the amount determined in accordance with paragraphs 1 and 2 of this section a further amount, fixed by him, to meet such conditions.

Modification or extension bond

SEC. 3. In case an application is made under regulation 2, section 1, for a modification or an extension of a license and no bond previously filed by the warehouseman under this regulation covers obligations arising under such modification or extension, the warehouseman shall, when notice has been given by the Secretary that such modification or extension will be granted upon compliance by such warehouseman with the act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the act. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and these regulations may be filed in lieu of a new bond.

New bond required each year

SEC. 4. Whenever a license has been issued for a period longer than one year, such license shall not be effective beyond one year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by, [fol. 32d-8] the Secretary prior to the date on which said license would have expired had it been issued for but one year, subject to the provisions of section 3 of this regulation.

Approval of bond

SEC. 5. No bond, amendment, or continuation thereof shall be accepted for the purposes of the act and these regulations until it has been approved by the Secretary.

Regulation 4. Warehouse Receipts

Contents of negotiable and non-negotiable receipts

SECTION 1. Paragraph 1. Every receipt, whether negotiable or non-negotiable, issued for cotton stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms the following: (a) The name of the licensed warehouseman and the designation, if any, of the warehouse; (b) the license number of the warehouse; (c) a statement whether the warehouseman is incorporated or unincorporated, and, if incorporated, under what laws; (d) the tag number given to each bale of cotton in accordance with regulation 5, section 9; (e) a statement conspicuously placed, whether or not the cotton is insured, and, if insured, to what extent, by the warehouseman, against loss by fire and lightning; (f) the words "Not Negotiable" or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; and (g) a blank space designated for the purpose in which the length of staple may be stated.

Storage period

Paragraph 2. Every receipt, whether negotiable or non-negotiable, issued for cotton stored in a licensed warehouse shall specify a period, not exceeding one year, for which the cotton is accepted for storage under the act and these regulations, but, upon demand and the surrender of the old receipt by the lawful holder thereof at or before the expiration of the specified period, the warehouseman, so far as the available capacity of his warehouse then permits and upon such lawful terms and conditions as may be granted by him at such time to other depositors of cotton in the warehouse shall, (a) if he then continue to act as a licensed warehouseman, either extend the old receipt by making an appropriate notation thereon or issue a new receipt for a further specified period not exceeding one

year; or (b) if he then continue to act as a public warehouseman, but not as a licensed warehouseman, issue a new receipt.

[fol. 32d-9] Additional contents of negotiable receipts

Paragraph 3. Every negotiable receipt issued for cotton stored in a licensed warehouse shall, in addition to complying with the requirements of paragraphs 1 and 2 of this section, embody within its written or printed terms the following: (a) If the cotton covered by such receipt was classified by a licensed classifier or weighed by a licensed weigher a statement to that effect, (b) a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on, the cotton covered by the receipt.

Grade or other class of cotton

Paragraph 4. Whenever the grade or other class of the cotton is required to be, or is, stated in a receipt issued for cotton stored in a licensed warehouse, such grade or other class shall be stated in the receipt in accordance with regulation 8 as far as applicable.

Omission of grade to be stated

Paragraph 5. If a warehouseman issue a receipt omitting the statement of grade on request of the depositor, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor."

Receipts for linters to be marked "Linters"

Paragraph 6. If licensed receipts are issued covering linters such receipts shall be clearly and conspicuously marked "Linters," and all references to cotton shall be eliminated effectively from the receipts.

Blank spaces in receipts to be filed out by drawing lines through them

Paragraph 7. If a warehouseman issue a receipt under the act omitting any information not required to be stated, for which a blank space is provided in the form of the re-

ceipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.

Copies of receipts

Sec. 2. If copies are made of receipts, all such copies, except those issued in lieu of the original in case of lost or destroyed receipts, shall, if there be no statute of the United States or law of a State providing otherwise, have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." If copies are not made then skeleton copies bearing the same numbers as the corresponding original receipts shall be made, but such skeleton copies need not be marked "Copy—Not Negotiable."

Lost or destroyed receipts.

Sec. 3. Paragraph 1. In the case of a lost or destroyed receipt, if there be no statute of the United States or law of a State applicable thereto, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, [fol. 32d-10] may be issued upon compliance with the conditions set out in paragraph 2 of this section.

Affidavit of loss or destruction of receipts. Bond.

Paragraph 2. Before issuing such duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (a) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and, if lost, that diligent effort has been made to find the receipt without success, and (b) a bond in an amount double the value, at the time the bond is given, of the cotton represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety

thereon (a) a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or (b) at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, to the extent of double the amount of the bond.

Printing of receipts

Sec. 4. No receipt shall be issued by a licensed warehouseman except it be (a) in form prescribed by the chief of the bureau, (b) upon distinctive paper specified by him, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper.

Partial delivery of cotton

Sec. 5. If a warehouseman deliver a part only of a lot of cotton for which he has issued a negotiable receipt under the act, he shall take up and cancel such receipt and issue a new receipt in accordance with these regulations for the undelivered portion of the cotton.

Return and cancellation of receipts before delivery of cotton

Sec. 6. Except as permitted by law or by these regulations, a warehouseman shall not deliver cotton for which he has issued a negotiable receipt under the act until such receipt has been returned to him and canceled; and shall not deliver cotton for which he has issued a non-negotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, [fol. 32d-11] or his authorized agent, a written acknowledgment thereof.

Warehouseman not to attempt to compel grade to be omitted

Sec. 7. No licensed warehouseman shall, directly or indirectly by any means whatsoever, compel or attempt to

compel the depositor of any cotton in his warehouse to request the issuance of a receipt omitting the statement of grade.

Regulation 5. Duties of Licensed Warehouseman

Insurance against fire or lightning

Section 1. Paragraph 1. Each licensed warehouseman, when so requested in writing as to any cotton by the depositor thereof or lawful holder of the receipt covering such cotton, shall, to the extent to which in the exercise of due diligence he is able to procure such insurance, keep such cotton while in his custody as a licensed warehouseman insured in his own name or arrange for its insurance otherwise to the extent so requested, against loss or damage caused by fire or lightning. When insurance is not carried in the warehouseman's name, the receipt shall show that the cotton is not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought, in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone and at his own expense, immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all cotton stored in his warehouse.

Notice regarding insurance to be posted

Paragraph 2. Each warehouseman shall keep exposed conspicuously in the place prescribed by regulation 2, section 4, and at such other place as the chief of the bureau or his representative may from time to time designate, a notice, stating briefly the conditions under which the cotton will be insured against loss or damage by fire or lightning.

Premiums, inspections, and reports

Sec. 2. Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of these regulations, pay such premiums, permit

such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

[fol. 32d-12] Warehouseman to collect and pay over insurance

Sec. 3. Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of these regulations, and shall, as soon as collected, promptly pay over to the persons concerned any portion of such moneys which they may be entitled to receive from him.

Care of cotton in licensed warehouse

Sec. 4. Each warehouseman shall at all times exercise such care in regard to cotton in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.

Care of other cotton and other commodities

Sec. 5. If, at any time, a warehouseman shall handle or store cotton otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise such care with respect to it, as not to endanger the cotton in his custody as a licensed warehouseman or impair his ability to meet his obligations and perform his duties under the act and these regulations. Nonlicensed cotton shall be kept separate from licensed cotton.

Records to be kept in safe place

Sec. 6. Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of receipts issued and canceled receipts, except that with the written consent of the chief of the bureau or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may

keep such records, books, and papers in some other place of safety, approved by the chief of the bureau or his representative. All canceled receipts shall be arranged by the warehouseman in numerical order as soon as possible after their cancellation and shall be preserved in numerical order thereafter.

Warehouse charges

Sec. 7. A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the act the warehouseman shall file with the bureau a copy of his rules, if any, and a schedule of the charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the bureau a statement in writing showing the proposed change and the reasons therefor. Each licensed warehouseman shall keep ex- [fol. 32d-13] posed conspicuously in the place prescribed by regulation 2, section 4, and at such other place, accessible to the public, as the chief of the bureau or his representative may from time to time designate, a copy of his current rules and schedule of charges.

Business hours

Sec. 8. Paragraph 1. Each licensed warehouse shall be kept open for the purpose of receiving cotton for storage and delivering cotton out of storage every business day for a period of not less than six hours between the hours of 8 a. m. and 6 p. m., except as provided in paragraph 2 of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a. m. to 6 p. m.

Closing of warehouse

Paragraph 2. In case the warehouse is not to be kept open as required by paragraph 1 of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, who shall be authorized to deliver cotton

stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.

Numbered tags to be attached to bales

Sec. 9. Each warehouseman shall, upon acceptance of any bale of cotton for storage, immediately attach thereto a numbered tag of good quality which shall identify the bale. Such tag either shall be made of reasonably heavy waterproof paper or linen, with double reinforced eyelets, and be attached to the bale with a flexible, ~~rust~~proof wire, or shall be made of such other material and attached by such other means as shall be approved by the chief of the bureau or his representative. The tags shall be attached in numerical sequence or any series of sequences clearly distinguishable from each other.

Arrangement and tagging of stored cotton

Sec. 10. Each warehouseman shall so store each bale of cotton for which a receipt under the act has been issued that the tag thereon, required by section 9 of this regulation, is visible and readily accessible, and shall arrange all other cotton in his licensed warehouse so as to permit an accurate count thereof.

[fol. 32d-14]

System of accounts

Sec. 11. Each warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the bureau, which shall show for each bale of cotton the tag number mentioned in section 9 of this regulation, its weight, its class when its class is required to be, or is ascertained, its location, the dates received for and delivered out of storage, and the receipts issued and canceled, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies.

Reports

Sec. 12. Each licensed warehouseman shall, from time to time, when requested by the chief of the bureau, make such reports, on forms prescribed and furnished for the purpose by the bureau, concerning the condition, contents,

operation, and business of the warehouse as the chief of the bureau may require.

Canceled receipts to be forwarded to bureau for auditing

Sec. 13. Each warehouseman, when requested by the bureau, shall forward his canceled receipts for auditing to such field offices of the bureau as may be designated from time to time. For the purposes of this section, only such portion as the bureau may designate of each canceled receipt, numbered to correspond with the actual receipt number, need be submitted.

Copies of reports to be kept

Sec. 14. Each warehouseman shall keep on file, as a part of the records of the warehouse, for such period as may be prescribed by the chief of the bureau for each kind of report, an exact copy of each such report submitted by such warehouseman under this regulation.

Inspections and examinations of warehouses

Sec. 15. Each licensed warehouseman shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to enter and inspect or examine, on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.

Weighing apparatus subject to examination and disapproval

Sec. 16. The weighing apparatus used for ascertaining the weight stated in a receipt or certificate, issued for cotton stored in a licensed warehouse, shall be subject to examination by any officer or agent of the Department of Agriculture designated by the chief of the bureau for the pur-
[fol. 32d-15] pose. If the bureau shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any cotton for the purposes of the act and these regulations.

Loose cotton

Sec. 17. Each warehouseman shall keep his warehouse reasonably free of loose cotton, except in a space or container separate and apart from other cotton.

Excess storage

Sec. 18. If at any time a warehouseman shall store cotton in his licensed warehouse in excess of the capacity thereof determined in accordance with paragraph 1 of section 2 of regulation 3, such warehouseman shall so arrange the cotton as not to obstruct free access thereto and the proper use of sprinkler or other fire protection equipment provided for such warehouse, and shall immediately notify the chief of the bureau of such excess storage and arrangement thereof.

Removal of cotton from storage

Sec. 19. Except as may be permitted by law or these regulations, a warehouseman shall not remove any cotton, for storage, from the licensed warehouse or a part thereof designated in the receipt for such cotton, if by such removal the insurance thereon will be impaired, without first obtaining the consent in writing of the holder of the receipt, and indorsing on such receipt the fact of such removal. Under no other circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, shall cotton be removed from the warehouse, and immediately upon any such removal the warehouseman shall notify the chief of the bureau of such removal and the necessity therefor.

Storage of wet cotton. Storage of cotton damaged by fire

Sec. 20. A warehouseman shall not place any bale of cotton that is excessively wet in contact with any other cotton in the licensed warehouse. A warehouseman shall not store in the same compartment with cotton that has not been damaged by fire any cotton that has been damaged by fire until the risk of fire therein has passed and the fire-damaged cotton has been removed from the bale, and then he shall not store it in contact with cotton that has not been so damaged.

Cotton not to be injured by handling or storing

Sec. 21. A warehouseman shall not handle or store cotton in such manner as will injure or damage it, or in any part of the warehouse in which it is likely to be injured or damaged by excessive moisture, or otherwise.

[fol. 32d-16] Warehouseman must comply with State law and his contracts

Sec. 22. Each warehouseman shall faithfully perform his obligations as a warehouseman under the laws of the State in which he is conducting his licensed warehouse and such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of cotton in such warehouse.

Fire loss to be reported by wire

Sec. 23. If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by wire to the chief of the bureau the occurrence of such fire and the extent of damage.

Copies of grade and weight certificates to be filed with licensed warehouseman

Sec. 24. When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cotton covered by such certificate is stored, and such certificates shall become a part of the records of the licensed warehouseman.

Regulation 6. Fees

Warehouse license fees

Section 1. There shall be charged, assessed, and collected a fee of $2 for each warehouseman's license.

Warehouse inspection fees

Sec. 2. There shall be charged, assessed, and collected for each original examination or inspection of a warehouse under the act, when such examination or inspection is made upon application of a warehouseman, a fee at the rate of $5

for each 1,000 bales of the storage capacity, or fraction thereof, determined in accordance with paragraph 1 of section 2 of regulation 3, but in no case less than $5 nor more than $100, and, for each reexamination or reinspection applied for by such warehouseman, a fee, based on the extent of the reexamination or reinspection, proportioned to, but not greater than, that prescribed for the original examination or inspection.

Advance deposit

Sec. 3. Before any warehouseman's license or modification or extension thereof is granted, or an original examination or inspection, or reexamination or reinspection, applied for by a warehouseman, is made, pursuant to these regulations, the warehouseman shall deposit with the bureau the amount of the fee prescribed therefor. Such deposit shall be made in the form of a check, certified, if required by the bureau, or post office or express money order, payable to the order of "Disbursing Clerk, U. S. Department of Agriculture."

[fol. 32d-17] Return of excess deposit

Sec. 4. The disbursing clerk of the United States Department of Agriculture shall hold in his custody each advance deposit made under this regulation until the fee, if any, is assessed and he is furnished by the bureau with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.

Regulation 7. Licensed Classifiers and Licensed Weighers

Application forms

Section 1. Paragraph 1. Applications for licenses to classify or to weigh cotton under section 11 of the act shall be made to the chief of the bureau on forms furnished for the purpose by him.

Contents

Paragraph 2. Each such application shall be in English, shall be signed by the applicant, shall be verified by him under oath or affirmation administered by a duly authorized

officer, and shall contain or be accompanied by (a) the name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the act, in which cotton sought to be classified or weighed under such license is or may be stored; (b) a statement from the warehouseman conducting such warehouse showing whether or not the applicant is competent and is acceptable to such warehouseman for the purpose; (c) satisfactory evidence that he is competent to classify or to weigh cotton; (d) a statement by the applicant that he agrees to comply with and abide by the terms of the act and these regulations so far as the same may relate to him; and (e) such other information as the chief of the bureau may deem necessary; provided, that when an application for a license to classify cotton is filed by a person who does not intend to classify cotton for any particular licensed warehouseman but who does intend to classify cotton stored or to be stored in a licensed warehouse and to issue class certificates therefor, as provided for by the act and these regulations, independent of the warehouse receipts issued to cover such cotton, it shall not be necessary to furnish such statement as is required by subdivision (b) of this paragraph.

Classifiers holding licenses under cotton standards act

Paragraph 3. For the purpose of classifying cotton under these regulations, each licensed classer who holds an unsuspended, unrevoked, or uncanceled license under the cotton standards act of March 4, 1923, and regulations thereunder to classify cotton and certificate the grade thereof shall be deemed competent and a license may be issued to him under the United States warehouse act upon furnishing the information required by paragraph 2 of this section except subdivision (c).

[fol. 32d-18] Applicant must furnish additional information if required

Paragraph 4. The applicant shall at any time furnish such additional information as the Secretary or the chief of the bureau shall find to be necessary to the consideration of his application.

Combined classifier's and weigher's application

Paragraph 5. A single application may be made by any person for a license as both classifier and weigher upon complying with all the requirements of this section.

Examination

Sec. 2. Each applicant for a license as a classifier or weigher and each licensed classifier or licensed weigher shall, whenever requested by an authorized agent of the Department of Agriculture designated by the chief of the bureau for the purpose, submit to an examination or test to show his ability properly to classify or to weigh cotton, as the case may be, and shall also make available for inspection copies of the standards of classification or the weighing apparatus, as the case may be, used or to be used by him.

Posting of license

Sec. 3. Each licensed classifier shall keep his license conspicuously posted in the office where all or most of the classifying is done, and each licensed weigher shall keep his license conspicuously posted in the warehouse office, or in such place as may be designated for the purpose by a representative of the bureau.

Duties of classifier and weigher

Sec. 4. Each licensed classifier and each licensed weigher, when requested, shall, without discrimination, as soon as practicable, and upon reasonable terms, classify or weigh and certificate the class or weight of cotton stored or to be stored in a licensed warehouse for which he holds a license, if such cotton be offered to him under such conditions as permit proper inspection and the determination of the class or weight thereof, as the case may be. Each such classifier or weigher shall give preference to persons who request his services as such over persons who request his services in any other capacity. No class certificate or weight certificate shall be issued under the act for cotton not stored or not to be stored in a licensed warehouse.

Class certificate

Sec. 5. Paragraph 1. Each class certificate issued under the act by a licensed classifier shall be in a form approved

for the purpose by the chief of the bureau, and shall embody within its written or printed terms (a) the caption "Cotton class certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the licensed warehouse in which the cotton is or is to be stored; (d) the date of the certificate; (e) the location of the cotton at the time of classification; (f) the identification of each bale of cotton by the tag number given to the bale in accordance with regulation 5, section 9, or if there be no such tag number by other marks or numbers; (g) the grade or other class, except length of staple, of each bale of cot- [fol. 32d-19] ton covered by the certificate, in accordance with regulation 8 as far as applicable, and the standard or description in accordance with which the classification is made; (h) a blank space designated for the purpose in which the length of staple may be stated; (i) that the certificate is issued by a licensed classifier under the United States warehouse act and regulations thereunder; and (j) the signature of the licensed classifier. In addition, the class certificate may include any other matter not inconsistent with the act or these regulations, provided the approval of the bureau is first secured.

Class certificates issued under cotton standards act

Paragraph 2. Class certificates issued under the cotton standards act of March 4, 1923, shall be deemed sufficient for the purposes of the warehouse act and these regulations, provided the person issuing such certificates holds unsuspended, unrevoked, and uncanceled licenses under both the cotton standards act and the United States warehouse act.

Weight certificate

Sec. 6. Each weight certificate issued under the act by a licensed weigher shall be in a form approved for the purpose by the chief of the bureau, and shall embody within its written or printed terms (a) the caption "Cotton weight certificate"; (b) whether it is an original, a duplicate, or other copy; (c) the name and location of the licensed warehouse in which the cotton is or is to be stored; (d) the date of the certificate; (e) the location of the cotton at the time of weighing; (f) the identification of each bale of cotton by the tag number given to the bale in accordance

with regulation 5, section 9, or if there be no such tag number by other marks or numbers; (g) the gross weight of the cotton and, if the cotton be excessively wet or otherwise of a condition materially affecting its weight, a statement of such fact to which may be added the weigher's estimate of the number of pounds which should be allowed for such condition; (h) that the certificate is issued by a licensed weigher under the United States warehouse act and the regulations thereunder; and (i) the signature of such licensed weigher. In addition, the weight certificate may include any other matter not inconsistent with the act or these regulations, provided the approval of the bureau is first secured.

Combined class and weight certificate

Sec. 7. The class and weight of any cotton, ascertained by a licensed classifier and a licensed weigher, may be stated on a certificate meeting the combined requirements of sections 5 and 6 of this regulation, if the form of such certificate shall have been approved for the purpose by the chief of the bureau.

Copies of certificates to be kept

Sec. 8. Each licensed classifier and each licensed weigher shall keep for a period of one year in a place accessible to [fol. 32d-20] interested persons a copy of each certificate issued by him under these regulations and shall file a copy of each such certificate with the warehouse in which the cotton covered by the certificate is stored.

Inspections

Sec. 9. Each licensed classifier and each licensed weigher shall permit any officer or agent of the Department of Agriculture, authorized by the Secretary for the purpose, to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the act and these regulations, and shall, with the consent of the licensed warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in section 15 of regulation 5, as far as any such inspection or examination relates to the performance of the duties

of such licensed classified or licensed weigher under the act and these regulations.

Reports

Sec. 10. Each licensed classifier and each licensed weigher shall, from time to time, when requested by the chief of the brueau, make reports, on forms furnished for the purpose by the bureau, bearing upon his activities as such licensed classifier or licensed weigher.

Suspension, revocation, or cancellation of classifier's and weigher's licenses

Sec. 11. Pending investigation the Secretary may, whenever he deems necessary, suspend the license of a licensed classifier or licensed weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted bly the licensed classifier or licensed weigher, the Secretary may, without hearing, suspend or cancel the license issued to such licensed classifier or licensed weigher. The Secretary may, after opportunity for hearing when possible has been afforded in the manner prescribed in this section, suspend or cancel a license issued to a licensed classifier or licensed weigher when such licensed classifier or licensed weigher (a) has ceased to perform services as such classifier or weigher, or (b) has in any other manner become incompetent or incapacitated to perform the duties of such licensed classifier or licensed weigher. As soon as it shall come to the attention of a licensed warehouseman that any of the conditions mentioned under (a) or (b) exist it shall be the duty of such warehouseman to notify in writing the chief of the bureau. Before the license of any licensed classifier or licensed wegher is suspended or revoked pursuant to section 12 of the act, such licensed classifier or licensed weigher shall be furnished by the Secretary, or by an official of the Depart-
[fol. 32d-21] ment of Agriculture designated for the purpose, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with regulation 10, section 4.

Return of suspended, revoked, or canceled classifier's and weigher's licenses

Sec. 12. Paragraph 1. In case a license issued to a licensed classifier or licensed weigher is suspended, revoked, or canceled by the Secretary, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the licensed classifier or licensed weigher to whom it was originally issued, and it shall be posted as prescribed in section 3 of this regulation.

License terminates with warehouse license. New licenses, when issued

Paragraph 2. Any license issued, under the act of these regulations, to a classifier or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be revoked or canceled. Thereupon the license of such classifier or weigher shall be returned to the Secretary. In case such license shall apply to other warehouses the Secretary shall issue to him a new license, omitting the names of the warehouses covering which licenses have been so revoked or canceled. Such new license shall be posted as prescribed in section 3 of this regulation.

Lost or destroyed classifier's and weigher's licenses

Sec. 13. Upon satisfactory proof of the loss or destruction of a license issued to a licensed classifier or licensed weigher, a duplicate thereof may be issued under the same or a new number, in the discretion of the Secretary.

Unlicensed classifiers and weighers must not represent themselves as licensed

Sec. 14. No person shall in any way represent himself to be a classifier or weigher licensed under the act unless he holds an unsuspended, unrevoked, and uncanceled license issued under the act.

Regulation 8. Cotton Classification

Class to be stated according to this regulation

Section 1. Whenever the grade or other class of cotton is required to be, or is, stated for the purpose of the act or

these regulations it shall be stated in accordance with this regulation, as far as applicable.

Official cotton standards of the United States

Sec. 2. The official cotton standards of the United States, established and promulgated under the United States cot- [fol. 32d-22] ton futures act of August 11, 1916, within their scope, are hereby adopted as the official cotton standards for the purposes of the act and these regulations.

Irregularities

Sec. 3. Paragraph 1. Cotton that, (a) because of the presence of extraneous matter of any character or irregularities or defects, is reduced in value below that of Good Ordinary, (b) is below the grade of Good Ordinary, (c) is below the grade of Law Middling, if tinged, (d) is below the grade of Middling, if stained, (e) is linters, (f) is less than seven eighths of an inch in length of staple, (g) is of perished staple, (h) is of immature staple, (i) is gin cut, (j) is reginned, (k) is repacked, (l) is false packed, (m) is mixed packed, or (n) is water packed, shall be designated as such. In the case of subdivision (a) of this paragraph the particular extraneous matter or irregularities or defects shall be stated.

Reduction in value

Paragraph 2. If cotton be reduced in value, by reason of the presence of extraneous matter of any character or irregularities or defects, below its grade according to the official cotton standards of the United States, except when the cotton is of a quality or condition specified in paragraph 1 of this section, the grade to the value of which it is so reduced and the quality or condition which so reduces its value shall be determined and stated.

Terms defined

Paragraph 3. For the purposes of this section, the following terms shall be construed, respectively, to mean—

Perished staple

(a) Cotton of perished staple.—Cotton that has had the strength of fiber as ordinarily found in cotton destroyed or unduly reduced through exposure to the weather either before picking or after baling, or through heating by fire, or on account of water packing, or by other causes.

Immature staple

(b) Cotton of immature staple.—Cotton that has been picked and baled before the fiber has reached a normal state of maturity, resulting in a weakened staple of inferior value.

Gin cut

(c) Git cut cotton.—Cotton that shows damage in ginning, through cutting by the saws, to an extent that reduces its value more than two grades.

Reginned

(d) Reginned cotton.—Cotton that has passed through the ginning process more than once and cotton that, after having been ginned, has been subjected to a cleaning process and then baled.

[fol. 32d-23]

Repacked

(e) Repacked cotton.—Cotton that is composed of factors', brokers', or other samples, or of loose or miscellaneous lots collected and rebaled.

False packed

(f) False packed cotton.—Cotton in a bale (1) containing substances entirely foreign to cotton, (2) containing damaged cotton in the interior with or without any indication of such damage upon the exterior, (3) composed of good cotton upon the exterior and decidedly inferior cotton in the interior in such manner as not to be detected by customary examination—that is, a plated bale—or (4) containing pickings or linters worked into the bale.

Mixed packed

(g) Mixed packed cotton.—Cotton in a bale which shows a difference of more than two grades between samples

drawn from the heads and the top and bottom sides of the bale, or which shows a difference in color exceeding two grades in value between such samples.

Water packed

(h) Water packed cotton.—Cotton in a bale that has been penetrated by water during the baling process, causing damage to the fiber, or a bale that through exposure to the weather or by other means, while apparently dry on the exterior, has been damaged by water in the interior.

Class to be based on proper inspection and sample

Sec. 4. Whenever the grade or other class of cotton is required to be, or is, stated by a warehouseman or a classifier for the purposes of the act or these regulations, it shall be based upon a careful inspection of and a sample properly drawn from the cotton.

Samples

Sec. 5. No sample taken from a bale of cotton of the square type shall be deemed to be properly drawn for the purposes of these regulations unless it be composed of cotton drawn by the customary methods from both sides of the bale and weigh not less than 4 ounces, except that, in any State where provision is made by law for the taking of representative samples at the gin, samples complying with such law may be used in determining the grade or other class of the cotton from which such samples were taken.

Class to be based on low side

Sec. 6. In case the cotton drawn from one portion of a bale is lower in class than that drawn from another portion of the bale, except as otherwise provided by these regulations, the class assigned to the bale shall be that of the cotton taken from the portion showing the lower class.

[fol. 32d-24] Access to official cotton standards

Sec. 7. Each licensed warehouseman and each licensed classifier shall keep himself provided with, or have access to, a set of practical forms of the official cotton standards

of the United States, or such parts thereof as the chief of the bureau shall deem necessary for use in the locality in which the licensed warehouse is located.

Regulation 9. Cotton Appeals

Who may appeal

Section 1. Whenever the grade or other class of cotton, for which official cotton standards of the United States are in effect, is stated on a receipt or a cotton class certificate issued under the act and these regulations, and a question arises as to the true grade or other class of such cotton, any person having an interest in the cotton may take an appeal for the determination of such question.

Complaint

Sec. 2. In order to take such an appeal a complaint in writing in accordance with section 3 of this regulation shall be filed with a duly authorized cotton examiner or a board of cotton examiners, or with the chief of the bureau who shall designate a cotton examiner or a board of cotton examiners for the purpose of disposing of such complaint.

Contents of complaint

Sec. 3. Such complaint shall be in English and shall state (a) the name and post-office address of the complainant and the nature of his interest in the cotton, (b) the name and post-office address of the holder of the receipt, if he be not the complainant, and of any other interested party, (c) the name and location of the licensed warehouse in which the cotton is stored, the tag number assigned to each bale of cotton involved in the appeal in accordance with regulation 5, section 9, the grade or other class assigned to such cotton by the licensed warehouseman, and the date of the receipt issued therefor, (d) the grade or other class assigned by the licensed classifier, if any, (e) the grade or other class, different from that assigned by the licensed warehouseman, which is contended for by any interested party, (f) whether, within complainant's knowledge, any appeal involving the same cotton previously has been taken, and if so, an appropriate identification of such other appeal, (g) if samples have been agreed upon and are sub-

mitted in accordance with paragraph 2 of section 5 of this regulation a statement thereof. The complainant shall [fol. 32d-25] file with his complaint, when practicable, or before the issuance of the cotton appeal certificate, in the appeal, the warehouse receipt or class certificate, if any, covering the cotton involved in the appeal. When such receipt or certificate is not filed a definite statement indicating why such papers are not produced shall be filed.

Proof of agent's authority

Sec. 4. In case a complaint is filed under this regulation by a person purporting to act in behalf of another person, the chief of the bureau, or the cotton examiner or the board of cotton examiners with whom it was filed, may, if considered necessary, require proof of the authority of such person to file the complaint.

Determination of appeals to be based on samples

Sec. 5, Paragraph 1. Appeals taken under this regulation shall be determined upon the basis of samples of the cotton involved which have been drawn and submitted in accordance with this section.

Agreed samples

Paragraph 2. The complainant may submit samples of the cotton involved which have been agreed upon by the licensed warehouseman in whose warehouse the cotton is stored and the interested parties other than such warehouseman, or have been drawn by a disinterested person selected for the purpose by the warehouseman and such parties. Such samples, when drawn from cotton to which section 5, of regulation 8 applies, shall be drawn in accordance with said section.

Unsatisfactory samples

Paragraph 3. If samples which have been submitted pursuant to paragraph 2 of this section be deemed unsatisfactory, the cotton examiner or board of cotton examiners by whom the appeal is heard or the chief of the bureau may require the submission of new samples in accordance with said paragraph 2.

Appeal dismissed or new samples drawn

Paragraph 4. In case samples are not submitted in accordance with paragraph 2 or 3 of this section, the chief of the bureau, the cotton examiner, or board of cotton examiners by whom the appeal is heard may dismiss the appeal as provided in section 6 of this regulation, or samples may be drawn from the cotton involved by a cotton examiner or by a disinterested person designated for the purpose by the cotton examiner or the board of cotton examiners by whom the appeal is heard or by the chief of the bureau, and the complainant shall cause the cotton to be made accessible for the purpose of drawing such samples.

[fol. 32d-26] Dismissal of appeals

Sec. 6. The chief of the bureau or the cotton examiner or board of cotton examiners by whom an appeal is heard may dismiss such appeal upon request of the complainant, or for noncompliance with these regulations, or if it be found that the appeal was not taken in good faith. In case of an appeal filed in the first instance with a cotton examiner, a dismissal upon request of the complainant shall be made only before notice of grade or other class as provided in section 7 of this regulation is issued.

Cotton appeal certificate.

Sec. 7. When an appeal filed with a board of cotton examiners has been determined, it shall immediately issue a cotton appeal certificate. When an appeal has been determined by a cotton examiner he shall issue a notice, a copy of which shall be sent by him to all parties shown by the record of the appeal to have an interest therein. In such notice the grade or other class assigned by him to the cotton involved in the appeal shall be stated, and any such interested party shall have a reasonable time, fixed in such notice, within which he may request of the chief of the bureau a review of the appeal by a board of cotton examiners. In case such request is not filed with such cotton examiner in the time fixed therefor, or in case within such time every such interested party waives in writing a review by a board of cotton examiners, the cotton examiner shall immediately issue a cotton appeal certificate showing the

grade or other class assigned to the cotton by him. In case a request under this section for a review of an appeal is filed within the time fixed for the filing of such request, the cotton examiner shall note in his records the time of such filing and shall immediately notify the chief of the bureau, who shall cause the appeal to be reviewed and a cotton appeal certificate issued showing the grade or other class assigned upon such review. Immediately upon the issuance of a cotton appeal certificate under this section, the original thereof, together with any receipt covering such cotton filed in the appeal, shall be sent to the licensed warehouseman concerned, and a copy shall be sent to each other person shown by the record of the appeal to be interested therein.

Expenses paid by complainant

SEC. 8. All expenses for the transmission of communications from the complainant, for telegraph and telephone toll charges on messages addressed to him, and for drawing [fol. 32d-27] and submitting samples required by section 5 of this regulation, including such traveling expenses, if any, incurred in accordance with the fiscal regulations of the Department of Agriculture as the chief of the bureau may deem proper, shall be borne by the complainant in the appeal in connection with which such expenses were incurred.

Advance deposit by complainant

SEC. 9. If required by the cotton examiner or board of cotton examiners by whom the appeal is heard, the complainant shall make an advance deposit to cover the expenses payable by him under section 8 of this regulation. Such deposit shall be in an amount fixed by the cotton examiner or board of cotton examiners, and shall be in the form of a check, certified if required by the chief of the bureau or a post-office or express money order, payable to the order of "Disbursing Clerk, Department of Agriculture." As soon as possible after the determination of an appeal in connection with which any such advance deposit shall have been made, the chief of the bureau shall furnish the disbursing clerk of the Department of Agriculture with a statement of the expenses, if any, chargeable against such

advance deposit. Thereupon the disbursing clerk shall return to the person making the advance deposit as much thereof as shall not be required for the payment of such expenses.

New warehouse receipt

Sec. 10. Upon demand by the lawful holder of a receipt for cotton involved in an appeal under this regulation, the licensed warehouseman shall surrender to such holder the original cotton appeal certificate issued in such appeal, and, if the grade or other class shown by such certificate be different from that shown by the receipt, shall, upon the return of the old receipt, issue a new receipt stating the grade or other class shown by such cotton appeal certificate.

Disposition of samples

Sec. 11. Samples submitted in appeals under this regulation may be used for the purposes of the Department of Agriculture or disposed of in accordance with the property regulations of the Department of Agriculture, and the proceeds, if any, covered into the Treasury of the United States as miscellaneous receipts, or may, at any time, in the discretion of the chief of the bureau, be returned to the complainant at his expense.

[fol. 32d-28] Regulation 10, Miscellaneous

Bond to be furnished by persons licensed under section 9 of act

Section 1. Every person applying for a license, or licensed, under section 9 of the act, shall, as such, be subject to all portions of these regulations, except section 3 of regulation 2, so far as they may relate to warehousemen. In case there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of cotton and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with sections 1 and 2 of regulation 3, file with the Secretary a single bond meeting the requirements of the act and regulations, in such form, and in such amount not less than $5,000, as he shall prescribe, to insure the per-

formance by such person, with respect to the acceptance of the custody of cotton and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any renewals or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed, a further amount, fixed by him, to meet such conditions.

Publications

Sec. 2. Publications under the act and the regulations shall be made in service and regulatory announcements of the bureau and such other media as the chief of that bureau may from time to time designate for the purpose.

Information of violations of act and regulations

Sec. 3. Every person licensed under the act shall immediately furnish the bureau any information which comes to the knowledge of such person tending to show that any provision of the act or the regulations has been violated.

Procedure in hearings

Sec. 4. For the purpose of a hearing under the act or these regulations, except regulation 9, the licensee involved shall be allowed a reasonable time, fixed by the Secretary or by an official of the Department of Agriculture designated by him for the purpose, within which affidavits and other proper evidence may be submitted. If requested by [fol. 32d-29] the licensee within such time, an oral hearing, of which reasonable notice shall be given, shall be held before, and at a time and place fixed by the Secretary or an official of the Department of Agriculture designated by him for the purpose. The testimony of the witnesses at such oral hearing shall be upon oath or affirmation administered by the official before whom the hearing is held, when

required by him. Such oral hearing may be adjourned by him from time to time. After reasonable notice to all parties concerned, the deposition of any witness may be taken at a time and place and before a person designated for the purpose by the Secretary or an official of the Department of Agriculture authorized by the Secretary. Every written entry in the records of the Department of Agriculture made by an officer or employee thereof in the course of his official duty, which is relevant to the issue involved in a hearing, shall be admissible as prima facie evidence of the facts stated therein without the production of such officer or employee. Copies of all papers and all the evidence submitted or considered in such hearing shall be made a part of the records of the Department of Agriculture. The records and, when there has been an oral hearing other than by the Secretary, the recommendation of the official holding such oral hearing shall be transmitted to the Secretary for his consideration. Each party shall pay all expenses contracted by him in connection with any hearing under this section.

No conflict with State or Federal laws

Sec. 5. Nothing in these regulations shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of, the laws of any State relating to warehouses, warehousemen, weighers, graders, or classifiers, nor shall these regulations be construed so as to limit the operation of any statute of the United States relating to warehouses, warehousemen, weighers, graders, or classifiers now in force in the District of Columbia or in any Territory or other place under the exclusive jurisdiction of the United States.

Amendments

Sec. 6. Any amendment to, or revision of, these regulations, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

[fol. 32d-30] General regulations under the United States warehouse Act

Regulation 1. Combination warehouses

One document and one license to cover several products

Section 1. A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the chief of the bureau.

Amount of assets and bond needed for combination warehouses

Sec. 2. Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the chief of the bureau in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

[fol. 32d-31] United States Warehouse Act

[As amended July 25, 1919, and February 23, 1923]

Title declared

That this Act shall be known by the short title of "United States warehouse Act."

Terms construed. Warehouse. Person. Warehouseman. Receipt

Sec. 2. That the term "warehouse" as used in this Act shall be deemed to mean every building, structure, or other protected inclosure in which any agricultural product is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which any agricultural product is or may be stored. As used in this Act, "person" includes a corporation or partnership or two or more persons having a joint or common interest; "warehouseman" means a person lawfully engaged in the business of storing agri-

cultural products; and "receipt" means a warehouse receipt.

Investigation, etc., of warehouses. Classification. Duties of warehousemen

Sec. 3. That the Secretary of Agriculture is authorized to investigate the storage, warehousing, classifying according to grade and otherwise, weighing, and certification of agricultural products; upon application to him by any person applying for license to conduct a warehouse under this Act, to inspect such warehouse or cause it to be inspected; at any time, with or without application to him, to inspect or cause to be inspected all warehouses licensed under this Act; to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product or products; to classify warehouses licensed or applying for a license in accordance with their ownership, location, surroundings, capacity, conditions, and other qualities, and as to the kinds of licenses issued or that may be issued for them pursuant to this Act; and to prescribe, within the limitations of this Act, the duties of the warehousemen conducting warehouses licensed under this Act with respect to their care of and responsibility for agricultural products stored therein.

Licenses to warehousemen. Conditions of issue.

Sec. 4. That the Secretary of Agriculture is authorized, upon application to him, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this Act and such rules and regulations as may be made hereunder: Provided, That each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license, to comply with and abide by all the terms of this Act and the rules and regulations prescribed hereunder.

Modification or extension of license

Sec. 5. That each license issued under Sections 4 and 9 of this Act shall terminate as therein provided, or in accord-

ance with the terms of this Act and the regulations thereunder, and may from time to time be modified or extended by a written instrument.

[fol. 32d-32] Bond to be filed. Conditions. Sureties, terms, etc. Additional bond

Sec. 6. That each warehouseman applying for a license to conduct a warehouse in accordance with this Act shall, as a condition to the granting thereof, execute and file with the Secretary of Agriculture a good and sufficient bond to the United States to secure the faithful performance of his obligations as a warehouseman under the laws of the State, District, or Territory in which he is conducting such warehouse, as well as under the terms of this Act and the rules and regulations prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural products in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, subject to service of process in suits on the bond within the State, District, or Territory in which the warehouse is located, and shall contain such terms and conditions as the Secretary of Agriculture may prescribe to carry out the purposes of this Act, and may, in the discretion of the Secretary of Agriculture, include the requirements of fire insurance. Whenever the Secretary of Agriculture shall determine that a bond approved by him is, or for any cause has become, insufficient, he may require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman may be suspended or revoked.

Suit on bond

Sec. 7. That any person injured by the breach of any obligation to secure which a bond is given, under the provisions of Sections 6 or 9, shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained by such breach.

Bonded warehouse. Designation. Conditions authorizing

Sec. 8. That upon the filing with and approval by the Secretary of Agriculture of a bond, in compliance with this Act, for the conduct of a warehouse, such warehouse shall be designated as bonded hereunder; but no warehouse shall be designated as bonded under this Act, and no name or description conveying the impression that it is so bonded, shall be used, until a bond, such as provided for in Section 6, has been filed with and approved by the Secretary of Agriculture, nor unless the license issued under this Act for the conduct of such warehouse remains unsuspended and unrevoked.

Licenses for storage by persons not warehousemen. Receipts and bond required

Sec. 9. That the Secretary of Agriculture may, under such rules and regulations as he shall prescribe, issue a license to any person not a warehouseman to accept the custody of agricultural products and to store the same in a warehouse or warehouses owned, operated, or leased by any State, upon condition that such person agree to comply with and abide by the terms of this Act and the rules and regulations prescribed hereunder. Each person so licensed shall issue receipts for the agricultural products placed in his custody, and shall give bond, in accordance with the provisions of this Act and the rules and regulations hereunder affecting warehousemen licensed under this Act, and shall otherwise be subject to this Act and such rules and regulations to the same extent as is provided for warehousemen licensed hereunder.

[fol. 32d-33] Examination and inspection charges. Deposit of fees

Sec. 10. That the Secretary of Agriculture shall charge, assess, and cause to be collected a reasonable fee for every examination or inspection of a warehouse under this Act when such examination or inspection is made upon application of a warehouseman, and a fee not exceeding $2 per annum for each license or renewal thereof issued to a warehouseman under this Act. All such fees shall be deposited and covered into the Treasury as miscellaneous receipts.

Licenses to inspectors, samplers, classifiers, and weighers of products. Conditions

Sec. 11. That the Secretary of Agriculture may upon presentation of satisfactory proof of competency, issue to any person a license to inspect, sample or classify any agricultural product or products, stored or to be stored in a warehouse licensed under this Act, according to condition, grade or otherwise and to certificate the condition, grade or other class thereof, or to weigh the same and certificate the weight thereof, or both to inspect, sample or classify and weigh the same and to certificate the condition, grade or other class and the weight thereof, upon condition that such person agree to comply with and abide by the terms of this Act and of the rules and regulations prescribed hereunder so far as the same relate to him.

Suspension, or revocation of licenses

Sec. 12. That any license issued to any person to inspect, sample or classify or to weigh any agricultural product or products under this Act may be suspended or revoked by the Secretary of Agriculture whenever he is satisfied, after opportunity afforded to the licensee concerned for a hearing, that such licensee has failed to inspect, sample, or classify or to weigh any agricultural product or products correctly, or has violated any of the provision of this Act or of the rules and regulations prescribed hereunder, so far as the same may relate to him, or that he has used his license or allowed it to be used for any improper purpose whatever. Pending investigation, the Secretary of Agriculture, whenever he deems necessary, may suspend a license temporarily without hearing.

Discrimination by licensed warehousemen forbidden

Sec. 13. That every warehouseman conducting a warehouse licensed under this Act shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities.

Deposits subject to terms of Act

Sec. 14. That any person who deposits agricultural products for storage in a warehouse licensed under this Act shall be deemed to have deposited the same subject to the terms of this Act and the rules and regulations prescribed hereunder.

Inspection and grading of fungible products

Sec. 15. That any fungible agricultural product stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act shall be inspected and graded by a person duly licensed to grade the same under this Act.

Separation of deposits. Mingling of fungible products permitted. Separation of grades

Sec. 16. That every warehouseman conducting a warehouse licensed under this Act shall keep the agricultural products therein of one depositor so far separate from agricultural products of other depositors, and from other [fels. 32d-34] agricultural products of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the agricultural products deposited; but if authorized by agreement or by custom, a warehouseman may mingle fungible agricultural products with other agricultural products of the same kind and grade, and shall be severally liable to each depositor for the care and redelivery of his share of such mass, to the same extent and under the same circumstances as if the agricultural products had been kept separate, but he shall at no time while they are in his custody mix fungible agricultural products of different grades.

Issue of receipts for products actually stored

Sec. 17. That for all agricultural products stored for interstate or foreign commerce, or in any place under the exclusive jurisdiction of the United States, in a warehouse licensed under this Act original receipts shall be issued by the warehouseman conducting the same, but no receipts shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof.

Contents of receipt

Sec. 18. That every receipt issued for agricultural products stored in a warehouse licensed under this Act shall embody within its written or printed terms (a) the location of the warehouse in which the agricultural products are stored; (b) the date of issue of the receipt; (c) the consecutive number of the receipt; (d) a statement whether the agricultural products received will be delivered to the bearer, to a specified person, or to a specified person or his order; (e) the rate of storage charges; (f) a description of the agricultural products received, showing the quantity thereof, or, in case of agricultural products customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages; (g) the grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made: Provided, That such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated under authority of law: Provided further, That until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the Secretary of Agriculture; (h) a statement that the receipt is issued subject to the United States warehouse Act and the rules and regulations prescribed thereunder; (i) if the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; (j) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien: Provided, That if the precise amount of such advances made or of such liabilities incurred be at the time of the issue of the receipt unknown to the warehouseman or his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient; (k) such

other terms and conditions within the limitations of this [fols. 32d-35] Act as may be required by the Secretary of Agriculture; and (1) the signature of the warehouseman, which may be made by his authorized agent: Provided, That unless otherwise required by the law of the State in which the warehouse is located, when requested by the depositor of other than fungible agricultural products, a receipt omitting compliance with subdivision (g) of this section may be issued: Provided, however, The Secretary of Agriculture may in his discretion require that such receipt have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable.

Established Standards to be Promulgated. Official Standards Adopted

Sec. 19. That the Secretary of Agriculture is authorized, from time to time, to establish and promulgate standards for agricultural products by which their quality or value may be judged or determined: Provided, That the standards for any agricultural products which have been, or which in future may be, established by or under authority of any other Act of Congress shall be, and are hereby, adopted for the purposes of this Act as the official standards of the United States for the agricultural products to which they relate.

Issue of Other Than Original Receipts Forbidden. Lost or Destroyed Receipts

Sec. 20. That while an original receipt issued under this Act is outstanding and uncanceled by the warehouseman issuing the same no other or further receipt shall be issued for the agricultural product covered thereby or for any part thereof, except that in the case of a lost or destroyed receipt a new receipt, upon the same terms and subject to the same conditions and bearing on its face the number and date of the receipt in lieu of which it is issued, may be issued upon compliance with the statutes of the United States applicable thereto in places under the exclusive jurisdiction of the United States or upon compliance with the laws of any State applicable thereto in any place not under the exclusive jurisdiction of the United States: Provided, That if there be in such case no statute of the United States or law of a State

applicable thereto such new receipts may be issued upon the giving of satisfactory security in compliance with the rules and regulations made pursuant to this Act.

Delivery of Products to Holders of Receipt. Conditions

Sec. 21. That a warehouseman conducting a warehouse licensed under this Act, in the absence of some lawful excuse, shall, without unnecessary delay, deliver the agricultural products stored therein upon a demand made either by the holder of a receipt for such agricultural products or by the depositor thereof if such demand be accompanied with (a) an offer to satisfy the warehouseman's lien; (b) an offer to surrender the receipt, if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and (c) a readiness and willingness to sign, when the products are delivered, an acknowledgment that they have been delivered if such signature is requested by the warehouseman.

Cancellation of Receipts Upon Delivery

Sec. 22. That a warehouseman conducting a warehouse licensed under this Act shall plainly cancel upon the face thereof each receipt returned to him upon the delivery by him of the agricultural products for which the receipt was issued.

Records to be Preserved. Reports of Business Operations

Sec. 23. That every warehouseman conducting a warehouse licensed under this Act shall keep in a place of safety complete and correct records of all agricultural products [fol. 32d-36] stored therein and withdrawn therefrom, of all warehouse receipts issued by him, and of the receipts returned to and canceled by him, shall make reports to the Secretary of Agriculture concerning such warehouse and the condition, contents, operation, and business thereof in such form and at such times as he may require, and shall conduct said warehouse in all other respects in compliance with this Act and the rules and regulations made hereunder.

Examination of Stored Products

Sec. 24. That the Secretary of Agriculture is authorized to cause examinations to be made of any agricultural prod-

uct stored in any warehouse licensed under this Act. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is not performing fully the duties imposed on him by this Act and the rules and regulations made hereunder, the secretary may publish his findings.

Suspension or Revocation of Licenses

Sec. 25. That the Secretary of Agriculture may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license issued to any warehouseman conducting a warehouse under this Act, for any violation of or failure to comply with any provision of this Act or of the rules and regulations made hereunder or upon the ground that unreasonable or exorbitant charges have been made for services rendered. Pending investigation, the Secretary of Agriculture, whenever he deems necessary, may suspend a license temporarily without hearing.

Publications

Sec. 26. That the Secretary of Agriculture from time to time may publish the results of any investigations made under Section 3 of this Act; and he shall publish the names and locations of warehouses licensed and bonded and the names and addresses of persons licensed under this Act and lists of all licenses terminated under this Act and the causes therefor.

Official Examinations of Records, Etc.

Sec. 27. That the Secretary of Agriculture is authorized through officials, employees, or agents of the Department of Agriculture designated by him to examine all books, records, papers, and accounts of warehouses licensed under this Act and of the warehousemen conducting such warehouses relating thereto.

Regulations Shall Be Made

Sec. 28. That the Secretary of Agriculture shall from time to time make such rules and regulations as he may deem necessary for the efficient execution of the provisions of this Act.

State Laws Not Impaired. Cooperation With State Authorities. Operation of Present Laws

Sec. 29. That nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, weighers, graders, inspectors, samplers or classifiers; but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act; nor shall this Act be construed so as to limit the operation of any statute of the United States relating to warehouses or warehousemen, weighers, graders, inspectors, samplers, or classifiers now in force in the District of Columbia or in any Territory or other place under the exclusive jurisdiction of the United States.

[fol. 32d-37] Violations

Sec. 30. That every person who shall forge, alter, counterfeit, simulate, or falsely represent, or shall without proper authority use, any license issued by the Secretary of Agriculture under this Act, or who shall violate or fail to comply with any provision of Section 8 of this Act, or who shall issue or utter a false or fraudulent receipt or certificate, or any person who, without lawful authority, shall convert to his own use, or use for purposes of securing a loan, or remove from a licensed warehouse contrary to this Act or the regulations promulgated thereunder, any agricultural products stored or to be stored in such warehouse and for which licensed receipts have been or are to be issued, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $10,000, or double the value of the products involved if such double value exceeds $10,000, or imprisoned not more than one year, or both, in the discretion of the court, and the owner of the agricultural products so converted, used, or removed may, in the discretion of the Secretary of Agriculture, be reimbursed for the value thereof out of any fine collected hereunder, by check drawn on the Treasury at the direction of the Secretary of Agriculture, for the value of such prod-

ucts to the extent that such owner has not otherwise been reimbursed. That any person who shall draw with intent to deceive a false sample of, or who shall willfully mutilate or falsely represent a sample drawn under this Act, or who shall classify, grade or weigh fraudulently, any agricultural products stored or to be stored under the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof fined not more than $500 or imprisoned for not more than six months, or both, in the discretion of the court.

Appropriations for Expenses

Sec. 31. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $50,000, available until expended, for the expenses of carrying into effect the provisions of this Act, including the payment of such rent and the employment of such persons and means as the Secretary of Agriculture may deem necessary in the city of Washington and elsewhere, and he is authorized, in his discretion, to employ qualified persons not regularly in the service of the United States for temporary assistance in carrying out the purposes of this Act, and out of the moneys appropriated by this Act to pay the salaries and expenses thereof.

Invalidity of Any Part Not to Affect Remainder of Act

Sec. 32. That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Amendments

Sec. 33. That the right to amend, alter, or repeal this Act is hereby expressly reserved.

(Here follows Exhibit "E" to Declaration, side folio 32e)

RECEIPT

LICENSED AND BONDED UNDER THE UNITED STATES WAREHOUSE ACT

ORIGINAL NEGOTIABLE

WAREHOUSE RECEIPT FOR BALES OF COTTON

RECEIVED FOR STORAGE FROM _____

OF _____ BALES OF COTTON DESCRIBED HEREIN, STORED IN THE ABOVE-NAMED WAREHOUSE, FOR WHICH THIS RECEIPT IS ISSUED SUBJECT TO THE UNITED STATES WAREHOUSE ACT, THE REGULATIONS FOR COTTON WAREHOUSES THEREUNDER, AND THE TERMS OF THIS CONTRACT. SAID COTTON IS _____ BY THE UNDERSIGNED WAREHOUSEMAN AGAINST LOSS OR DAMAGE BY FIRE OR LIGHTNING. SAID COTTON IS ACCEPTED FOR STORAGE FOR ONE YEAR ONLY FROM THE DATE OF THIS RECEIPT, BUT UPON SURRENDER BY THE HOLDER THIS RECEIPT MAY BE EXTENDED OR A NEW RECEIPT ISSUED, AS PROVIDED IN SAID REGULATIONS. THE UNDERSIGNED WAREHOUSEMAN IS NOT THE OWNER OF THE COTTON COVERED BY THIS RECEIPT, EITHER SOLELY, JOINTLY, OR IN COMMON WITH OTHERS, UNLESS OTHERWISE STATED HERE _____ UPON THE RETURN OF THIS RECEIPT, PROPERLY ENDORSED, AND THE PAYMENT OF ALL CHARGES AND LIABILITIES DUE THE UNDERSIGNED WAREHOUSEMAN, AS STATED HEREIN, SAID COTTON WILL BE DELIVERED TO THE ABOVE-NAMED DEPOSITOR OR HIS ORDER.

ISSUED AT _____ ON _____ 192_

BY Exhibit "E"

THE UNDERSIGNED WAREHOUSEMAN CLAIMS A LIEN ON SAID COTTON FOR CHARGES AND LIABILITIES AS FOLLOWS: PER BALE

MARKS _____

*GRADE _____

*STAPLE _____

CONDITION _____

SEE REVERSE SIDE FOR TAG NUMBERS AND WEIGHTS

*ACCORDING TO THE OFFICIAL COTTON STANDARDS OF THE UNITED STATES

THE ISSUANCE OF A FRAUDULENT RECEIPT, OR ILLEGAL CONVERSION OR REMOVAL OF THE COTTON REPRESENTED BY THIS RECEIPT, IS PUNISHABLE BY A $10,00000 FINE, OR IMPRISONMENT FOR ONE YEAR, OR BOTH

49

32-"E"

Exhibit "E" to Declaration.

70A

[fol. 32f] Clerk's certificate to foregoing exhibits omitted in printing.

[fol. 33] [File endorsement omitted]

[fol. 34] In Circuit Court of Bolivar County

[Title omitted]

General Issue Plea—Filed Nov. 3, 1932

Now comes E. R. McLean, Sheriff and Tax Collector of Bolivar County, Mississippi, and Mrs. E. R. McLean, J. L. McLean, J. L. Smith, J. P. Wiggins, *M*m. Berger, *B*rs. W. M. Berger, R. E. Jackson, E. W. Brown, Jr., J. P. Manning, H. J. Inghram, A. E. Graham, E. R. Nobles, H. M. Laudig, W. M. Merritt, Ed. B. Hill, C. J. Craggs, E. H. Green, J. C. Windham, Nelson H. Floyd, and S. B. Johnson, sureties on the official bond of E. R. McLean, Sheriff and Tax Collector, by their attorney, and for plea to the second count of Plaintiff's declaration herein filed, say, they are not guilty of the wrongs and injuries whereof Plaintiff hath complained, nor are they indebted to the Plaintiff in the manner and form as alleged in Plaintiff's declaration, or in any other manner or amount whatsoever, and of this they put themselves upon the country.

W. W. Pierce, Assistant Attorney General, of Counsel for Defendants.

[File endorsement omitted.]

[fol. 35] In Circuit Court of Bolivar County

[Title omitted]

Agreement as to Agreed Statement of Facts—Filed Nov. 29, 1932

It is hereby stipulated and agreed by and between the complainant and defendant that the agreed statement of facts filed herein, and on which the peremptory instruction was granted to the defendant by the court, shall be used as the record of the trial upon the facts, without the necessity

of certificate by the Official Court Reporter, and without formal bill of exceptions.

This November 26th, 1932.

Federal Compress & Warehouse Company, by Green, Green & Jackson, Solicitor for Complainant. E. R. McLean, Sheriff & Tax Collector, by Greek L. Rice, Attorney General, by W. W. Pierce, Assistant Attorney General and Solicitor for Defendant.

[File endorsement omitted.]

[fol. 36] In Circuit Court of Bolivar County

[Title omitted]

Order Permitting Non-Suit as to All Defendants Except E. R. McLean, Sheriff, etc.—Filed Nov. 21, 1932

This cause coming on this date for hearing on request of plaintiff Federal Compress & Warehouse Company, for permission to take non-suit and dismissal as to all Defendants except the Defendant E. R. McLean, Sheriff & Tax Collector of Bolivar County, Mississippi, and the Court having considered said request in open court is of the opinion that the same should be allowed.

It is therefore ordered and adjudged that as to the Defendants Mrs. E. R. McLean, J. L. McLean, J. L. Smith, J. P. Wiggins, M. W. Berger, Mrs. W. M. Berger, J. P. Manning, H. J. Ingraham, A. E. Graham, E. R. Noble, H. M. Laudig, W. M. Merritt, Ed B. Hill, C. J. Craggs, E. H. Green, J. C. Windham, Nelson H. Floyd, and S. B. Johnson, a non-suit be and the same is hereby entered and this cause shall stand dismissed as to them without prejudice, such non-suit as to said defendants to be at the cost of the Plaintiff to be taxed and for all of which let execution and all proper process issue.

Ordered and adjudged this the 21st day of November, 1932.

—— ——, Circuit District Judge.

OK.

W. W. Pierce, Ass't Att'y Gen., Att'y for Def'ts.

[File endorsement omitted.]

[fol. 37] IN CIRCUIT COURT OF BOLIVAR COUNTY

[Title omitted]

AGREED STATEMENT AS TO FACTS, WITH RESERVATIONS OF RIGHTS AS TO QUESTIONS OF LAW—Filed Nov. 17, 1932

On the trial of the above entitled cause, it is agreed between counsel for the respective parties that either party hereto may introduce all or any part of this agreed statement of facts that may be desired, but this right to introduce shall not prejudice the right of either party hereto to object to any portion of the facts herein recited as being incompetent, irrelevant and/or immaterial, and the fact that the facts are herein recited shall in no way prejudice this right to object, they being inserted merely that each party respectively may present that which is desired.

It is agreed that E. R. McLean is the Sheriff and Tax Collector of Bolivar County, Mississippi, and has executed his official bond as shown by Exhibit "A" to the declaration.

The Federal Compress & Warehouse Company, herein called "Company," is a corporation duly chartered under the laws of Delaware, having its principal place of business at Memphis, Tennessee, and operating plants in Mississippi at many points, among others at Cleveland.

That cotton, when it ripens in the field, is picked by hand, put through a ginnery, by the process of which machine [fol. 38] the lint is removed from the seed, and the lint cotton is wrapped and tied into bales weighing approximately five hundred pounds each. A bale of cotton when wrapped and tied at the gin is approximately five feet in length, three and one-half feet in width, and four and one-fourth feet in height.

By general and uniform custom, bales of cotton from the gin are transported by rail or otherwise, as hereinafter described, to compresses. A compress is a combination storage warehouse and plant equipped with machinery designed to press bales of cotton, under extremely high pressure, for the purpose of reducing its size. A bale, after compression, is only about eighteen inches thick, the purpose of compression being that the railroads and carriers by water in interstate and foreign commerce, as hereinafter described, are enabled to load into cars and ships, for such

carriage, approximately three times as much cotton after compression as otherwise would be possible. Approximately twenty-five percent of the cotton which is bought and sold upon said market in Cleveland, and is transported to the compresses by automobile, truck, or wagon, and delivered by that means to said compresses. Approximately seventy-five percent of said cotton is transported to said compresses by rail over the lines of the Yazoo & Mississippi Valley Railroad Company, a common carrier engaged in interstate commerce, and which is the only such common carrier doing business at said market.

At Cleveland there is a compress owned and operated by a corporation existing under the Laws of the State of Delaware, to wit The Federal Compress & Warehouse Company. Said Federal Compress and Warehouse Company has, with reference to said Compress maintained at Cleveland, complied with all the terms and provisions of an act [fol. 39] of Congress, the short title of which is the "United States Warehouse Act," being Chapter 10, Title 7, U. S. C. A. The said Federal Compress and Warehouse Company complied with the terms and provisions of the said "United States Warehouse Act" for the reason that all of said cotton stored in the said compress and/or warehouses at Cleveland, Mississippi, and handled in the manner above described was and is cotton stored and handled therein for interstate and/or foreign commerce, except as later herein stated.

When cotton is delivered to said compresses, the said Federal Compress & Warehouse Company issues to the owner thereof warehouse receipts, which receipts comply in all things with the terms and provisions of said Act of Congress. Said cotton is universally sold upon the market by transfer and delivery of said warehouse receipts issued in accordance with the terms of said Act of Congress, and actual samples taken from said bales of cotton; said warehouse receipts being the evidence of the ownership of such cotton.

At Cleveland, there exists an active market for the purchase and sale of cotton between farmers raising said cotton and cotton brokers and others engaged in like business, who are purchasing the same with the intention and purpose of selling and transporting same in interstate and foreign commerce, which is and was and has been universal custom

and cousre of business for more than twenty years past. The price at which said cotton is sold upon said market at Cleveland, however, is determined by the value of such cotton upon certain cotton exchanges maintained, respectively, in the Cities of New Orleans, Louisiana, Chicago, Illinois, and New York, New York; and there are maintained, in the City of Cleveland, Mississippi, offices of brokers who receive daily [fol. 40] by wire, for periods of approximately five hours each day, continuous quotations from such exchanges which fix and determine the price at which cotton is sold upon said Cleveland market. All of said cotton, however, is bought with the uniform purpose and intention, except the "overs" hereinafter mentioned, (which is and has been the universal course of business) to transport the same in interstate and foreign commerce to the mills located in states upon the Atlantic seaboard, to-wit: Georgia, South Carolina, North Carolina, and Tennessee; and the mills of the New England States, to-wit: Massachusetts, Rhode Island, and Connecticut; and the mills of foreign countries. None of said cotton is spun or utilized within the confines of the State of Mississippi, or sold to, or purchased by any consumer within the confines of the State of Mississippi, except as later stated.

Approximately seventy-five per cent of said cotton is delivered by rail to said compresses at Cleveland, the said carrier transported by rail the said cotton to the said compress at Cleveland, and it is there concentrated merely for the purpose of compression and for the purpose of awaiting the determination of its final point of destination outside of the State of Mississippi. When the destination of such cotton is determined, the said carrier loads the same out on instructions of the then owner, after having the said cotton conpressed, and charges the through freight rate from the point of origin to the point of destination outside of the State of Mississippi, instead of charging the combined rate for carriage intrastate commerce from the point of origin to Cleveland, plus the charge for carriage in interstate commerce from Cleveland to the point of destination. The said carrier, instead of charging the combined rate above outlined for carriage from Loflin, Mississippi, to Mays Landing, N. J., charges the through-rate, which is the intermediate rate, as if there had been no interruption of shipment from Loflin, Mississippi, to Mays Landing,

[fol. 41] N. J. The said charges are made by said carriers in accordance with the regulations prescribed by the Interstate Commerce Commission in pursuance of the act of Congress creating said commission and the several amendments thereto.

The general and uniform custom and course of business in handling said cotton upon said market is had and done in the following manner:

The farmer causes warehouse receipts, when the cotton is delivered to the compress, to be issued and delivered either directly to himself or his agent, commonly called a cotton factor. Upon the Cleveland market, there are approximately twenty-five buyers and shippers who are engaged in the sole business of buying, selling and shipping cotton in interstate and foreign commerce. The farmer or the factor causes the actual bales of cotton to be sampled, and the cotton is sold to buyers, sellers, and shippers upon said market, upon the basis disclosed by the character of the samples of said cotton, and by endorsement and delivery of the said cotton receipts evidencing the ownership of the same, the price therefor being governed by the markets in New York, Chicago and New Orleans. It is uniformly known and understood by the farmer, cotton factor, and the buyer that the buyer is purchasing said cotton solely for the purpose of causing the same to be transported by rail and/or water to said points in the United States and foreign countries where mills convert said cotton into textile products as aforesaid. No cotton that is bought and/or sold upon the Cleveland market is utilized in the State of Mississippi, but all of said cotton, as aforesaid, is transported for consumption in interstate and foreign commerce, except as later stated.

The general and uniform custom among buyers, shippers, [fol. 42] and sellers, as well as the general course of business is that a buyer enters into a contract for either the future or immediate delivery of a certain number of bales of cotton of a certain class, grade, and staple, obligating himself by contract to deliver to a mill in a foreign state or country such cotton at a given price. Thereupon, such buyer will go upon the said market at Cleveland, and purchase cotton of the kind and character which he is obligated to his customer to deliver, and will cause the delivery of said cotton in interstate and/or foreign commerce in accordance

with the terms of his contract. A very small proportion of the cotton purchased by shippers, and cotton buyers (not exceeding ten per cent) is bought when no contract for the sale thereof exists, but, in such cases, it is bought with the sole anticipation and intention on the part of the buyer (which intention is fully known both to the buyer, farmer, and/or factor) to procure a sale of said cotton to some foreign mill or foreign cotton merchant, and to cause the same to be transported in the interstate and/or foreign commerce, as aforesaid, at such time as market conditions will justify.

In the purchase of cotton as above set forth a small proportion of the cotton was purchased varying from one percent to ten percent constituting what is known in the cotton trade as "overs", "of cotton which does not fit" and said overs arising from reclassification, rejection and preparation. As an incident to the purchase and shipment of this cotton by buyer and sellers, the same is sold locally, this small percentage of cotton for which they have no use, but which said latter cotton is eventually shipped out of the State of Mississippi by other cotton buyers of the same class for delivery on orders which they may have for cotton of this [fol. 43] particular grade, type or staple. The Company has a warehouse and compress at Cleveland, Mississippi, the capacity of the warehouse being more than 20,000 bales of cotton and less than 35,000 bales of cotton, and also has a compress there which compresses more than 30,000 bales of cotton, but less than 40,000 bales per annum, and a plat of said Compress and warehouse is hereto annexed, marked Exhibit "A" and made part hereof as if fully copied herein, and for the purposes of this suit alone, that said property in Cleveland has been lawfully assessed for all ad valorem taxation, and all state, county, municipal and levee board taxes, which have been piad; provided, nevertheless, that the making of this agreement shall not prejudice the right of the State, County, Levee District and/or municipality to have or recover any other or further taxes ad valorem which may be found to be due.

In usual practise, it takes from two and a half to three cars l-aded with uncompressed cotton inbound to a concentration point as compared with one car of compressed cotton outbound from the concentration point, and at Cleveland, as well as at a number of other points, the railroad

companies have employed this company to act as its limited agent by a contract dated the 1st day of February, 1930, a copy of which is hereto annexed, marked Exhibit "B", the pertinent portion ther-of being:

"The intent and purpose of this agreement, among other things, is to confirm the Compress Company as the limited agent of the Railroad Company for the purposes of receiving cotton from the Railroad Company, delivering cotton to the Railroad Company, loading and unloading cotton from and into the cars of said Railroad Company, making proper delivery of cotton in the custody of said Compress Company so far as concerns the interest of the Railroad Company, and as principal to furnish the premises for the use of the Railroad Company as a cotton depot under and subject to all of the terms and conditions [fol. 44] of this agreement and the lawfully published tariffs and regulations of the Railroad Company from time to time in effect with respect to the transportation and handling of cotton."

Pursuant to that contract this Company has performed for many years last past and is now performing.

A typical movement of cotton is illustrated by the Exhibits hereto annexed as to an inbound shipment of 36 bales of uncompressed cotton, which originated at Loflin, Mississippi, a station about five miles from Cleveland. These 36 bales of cotton were received at Cleveland, Mississippi, on Yazoo & Mississippi Valley Railroad Company's Expense Bill No. 402, dated December 16, 1932, made Exhibit "C" hereto.

The shipment weighed, as thereon noted, 18,023 pounds, and moved into Cleveland, Mississippi, on a floating rate from Loflin, of 17¢ per 100 pounds. This cotton was weighed upon arrival, retagged with tags furnished by the Company, receiving weight sheets were issued per Exhibit "D" hereto annexed, in triplicate.

Whereupon, 36, individual warehouse receipts were issued covering the cotton, with each individual bale weight shown thereon, as per Exhibit "E" hereto attached.

The cotton was also sampled upon arrival and the company delivered a copy of the weight sheet, samples and warehouse receipt to the owner of this cotton, which owner then classed these 36 bales of cotton into lots of even run-

ning grade and staple, placing that part of the 36 bales with other cotton, according to its respective class, subsequently shipping said 36 bales for consumption as follows:

January 18, 1932.—5 bales in 27 bale shipment marked V A T P/M destined to Mays Landing, N. J.

January 20, 1932.—1 bale in 6 bale shipment marked V A P P/M destined to Goldville, S. C.

[fol. 45] January 22, 1932.—32 bales in 50 bale shipment marked G A A P/M destined to Manchester, England.

February 16, 1932.—4 bales in 6 bale shipment marked E A A T/M destined to Mays Landing, N. J.

February 24, 1932.—1 bale in 7 bale shipment marked N C A N destined to Liverpool, England.

February 27, 1932.—1 bale in 14 bale shipment marked V A X P/M destined to Goldville, S. C.

March 3rd, 1932.—1 bale in 179 bale shipment marked D H N T destined to Gunterville, Ala.

The above warehouse receipts, as covered by Exhibit "E" were surrendered and the cotton was shipped on shipping orders from the cotton shipper, *manely*, the Staple Cotton Cooperative Association, as per Exhibit "F" hereto attached, from Cleveland, Mississippi, to the above destinations, covered by Yazoo & Mississippi Valley Railroad Company bills of lading, as per Exhibit "G" attached, and moved from Cleveland to the above mentioned destinations over the Yazoo & Mississippi Valley Railroad and connecting carriers and/or ships as per Exhibit "H" hereto attached.

This cotton was concentrated at Cleveland by the Cooperative Association from its members for the purpose of orderly marketing and was shipped out by it, but the vast majority of cotton concentrated there is handled as hereinabove detailed.

The cotton remains in the warehouse until the owner desires to have it shipped, when such owner, as hereinbefore indicated, does those things hereinbefore set out, whereupon in virtue of these things so done, the cotton is shipped as directed. The identity of each bale of cotton is not preserved in reshipping from the concentration point, substitution is permitted with the understanding that the integrity of the through rate from the original shipping point to ultimate destination is preserved.

[fol. 46] The rules and regulations covering the concentration of cotton at Cleveland, the compression and protection of the through rate, as well as the amount to be paid for compression, namely 15¢ per cwt., is covered by Yazoo & Mississippi Valley Railroad Co.'s tariff No. 44-G, I. C. C. No. 6828 and supplement No. 20 to this tariff, as per Exhibit "J" hereto annexed, which tariff has been regularly published and filed with the Interstate Commerce Commission in pursuance of the Act to Regulate Commerce and the several amendments thereto. That the compression charge of 15¢ is paid by the carrier.

Below is an example showing how the Interstate rate applies to the five bales of cotton marked V A T P/M which originated in this 36 bale shipment:

It was shipped from Laughlin, Miss., to Cleveland, Miss., for the purposes mentioned herein and a floating-in rate of 17¢ per cwt. assessed. We find a through rate quoted from Laughlin, Miss., via Cleveland, Miss., to Mays Landing, N. J., on carriers privilege of compression of $1.17 per cwt. In the shipping of these five bales of cotton and the prepaying of the total amount of freight due (using 500 pounds to the bale) which is $5.85 per bale, there was delivered to the railroad a freight bill covering the movement of five bales of cotton into Cleveland, Miss., for which a charge of 85¢ per bale (using 500 pounds to the bale) was assessed, and the Railroad accepted the freight bill for the full value thereof, and the shipper paid to them the difference between the rate of freight quoted from Laughlin, Miss., to Mays Landing, N. J., and the amount paid for the movement of the cotton from Laughlin, Miss., to Cleveland, Miss., which is $1.00 per cwt., or $5.00 per bale, and out of the latter rate the Railroad paid the Cleve-
[fol. 47] land compress 15¢ per cwt. or 75¢ per bale for compressing the cotton.

At Cleveland there is but one compress and warehouse owned and operated by this Company, and this Company, as to its warehouse, has complied with all of the terms and provisions of the Act of Congress, the short title of which is the United States Warehouse Act, being Chapter 10, Title 7, U. S. C. A. The Company has fully complied with the terms and provisions of said Act and all cotton moving through said warehouse for the last five years except ten bales, which were shipped uncompressed to a cotton

mill in Mississippi, has moved through Cleveland as a concentration point to Interstate and foreign points.

When cotton is delivered to the Company, it issues those warehouse receipts pursuant to the Act of Congress, which receipts are in the form prescribed by the Department of Agriculture and conformed to the provisions of said Act. At Cleveland there exhists an active market for the purchase and sale of cotton between farmers raising the same and others who are purchasing the cotton as hereinabove delineated. The Staple Cotton Cooperative Association also assembles the cotton for orderly marketing with the same intent as if it were a cotton buyer, and when and as it has assembled the same, ships the cotton out as above delineated.

Cotton was introduced, as it is thought, into Mississippi by the French, who are assumed to have bought it from San Domingo, and its first historical appearance is at a garden at Natchez, in 1722, by 1820 Mississippi had become a substantial grower of cotton. By 1830 it was producing approximately 100,000 bales annually. 1840 it lead all of the states in the production of cotton with 386,803 bales. Then came the Civil War with the disorganization incident [fol. 48] thereto. However, by 1869 it was enabled to produce in that year 451,950 bales, and 1879, 963,111 bales. In 1889 it produced 1,154,725 bales, ranking third among the states of the American Union, Texas being first, Georgia second. In 1899 Mississippi produced 1,313,798 bales, with Texas first, and at present time the State is regarded as the cecond in the produc-ion of cotton as compared with the other states of the American Union.

Annexed as Exhibit "K" is a statement showing the years beginning 1901, acres harvested, the yield in Mississippi and the total yield in Continental United States. The consumption of cotton in Mississippi is as shown by Exhibit "L" hereto annexed, but the number of active spindles in 1930 was only 131,284, but there has been a tendency for more spindles to become active. The total number of bales of cotton consumed by these mills does not come all from Mississippi. The proportion arising in Mississippi is impossible to ascertain, but by far the greater part is Mississippi cotton.

Cotton is the great cash crop of Mississippi and has been so for many years last past. Cotton not consumed in Mississippi is exported from Mississippi.

The warehouse and compress at Cleveland has been operated as a United States licensed warehouse since 1916, pursuant to the Act above referred to, and a copy of the license is annexed to the declaration, and also a copy of the bond required by the United States, the company having made application with the Secretary of Agriculture for a license under said Act, which the Secretary granted, making the determination as to said warehouse being necessary and suitable for the storage of cotton, and classified said warehouse in accordance with its ownership, location, etc., before issuing said certificate. A copy of the rules [fol. 49] prescribed is annexed as Exhibit "B" to the declaration, and since 1925 this company at Cleveland has been a licensed Federal Warehouse and has made all reports of it required by the Secretary of Agriculture under said Act as to its condition, contents and operation, and it is the purpose of the plaintiff to continue so to operate said warehouse during the remainder of said year, having already so operated it from May 1, 1932 in strict compliance with said statute and rules and regulations made thereon.

Plaintiff paid under protests the several amounts shown as privilege taxes as a compress and a warehouse, which are taxed separately by the Laws of the State of Mississippi, the rate for compression being 15¢ per hundred pounds which charge or compression allowance has been found reasonable by the Interstate Commerce Commission for East of the Mississippi River.

No cotton has been compressed by the Company until it was ready to move out of the warehouse by rail, but ten bales of cotton during the last five years did move uncompressed to a Mississippi mill.

It is further agreed that the plaintiff herein, the Federal Compress and Warehouse Company, does not buy or sell cotton, nor own any interest in same; that when cotton is shipped out of the Warehouse, bills of lading therefor are not issued to the plaintiff but to the owner of such cotton as is evidenced by the ownership of warehouse receipts; that the movement of cotton out of the warehouse is directed by the owner of same as evidenced by

the ownership of warehouse receipts; that the plaintiff does not own or operate directly or indirectly, any facilities for transporting cotton from its warehouse at Cleve- [fol. 50] land, Mississippi, to points *within* or without the boundaries of the State of Mississippi, and is not a carrier of property for hire or otherwise.

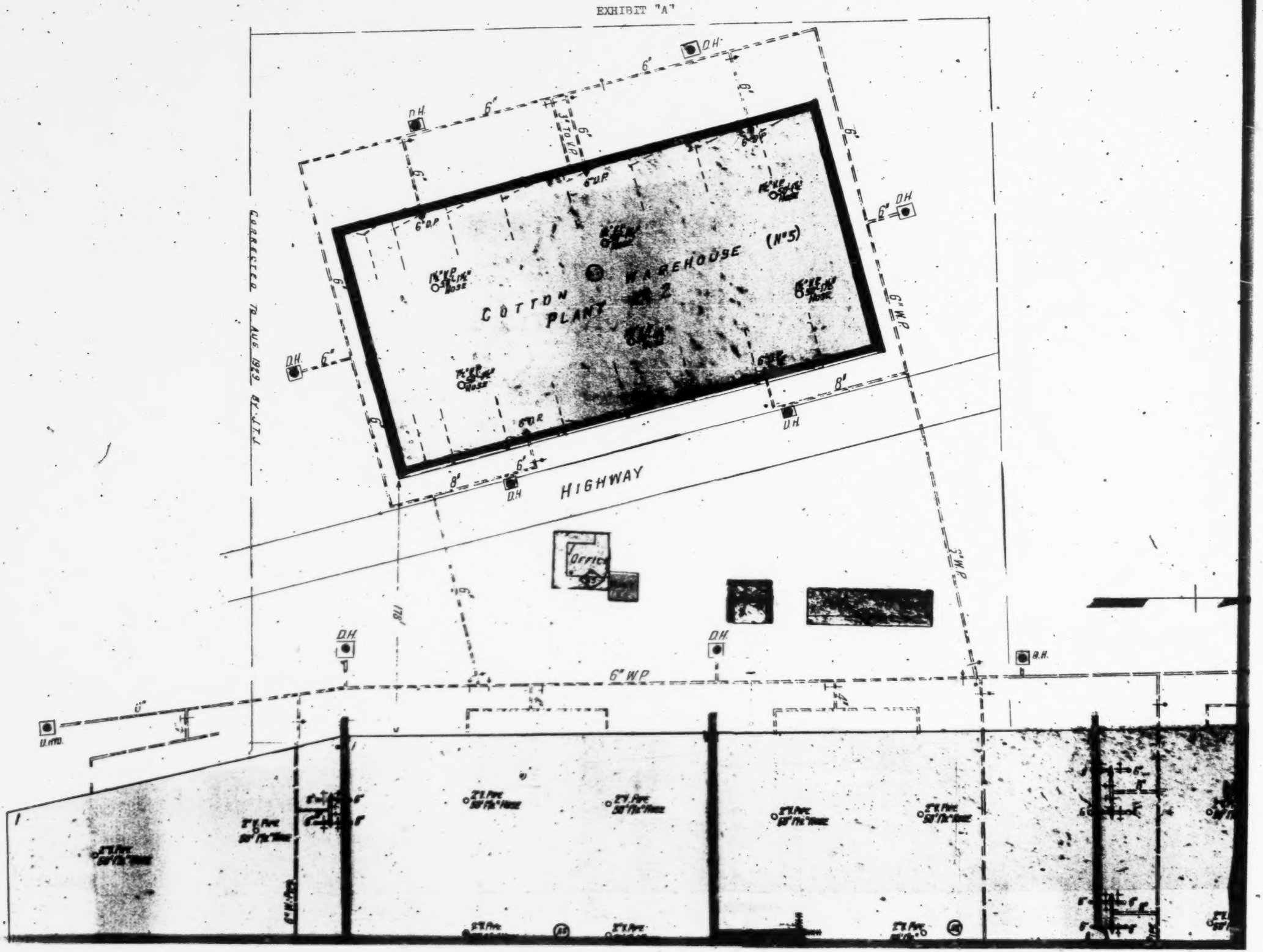
This November 15, 1932.

Green, Green & Jackson, by Forest B. Jackson, Attorney for Plaintiff. Greek L. Rice, Attorney General of Miss., by W. W. Pierce, Assistant Attorney General, Attorneys for Defendants.

[File endorsement omitted.]

(Here follows Exhibit "A," map, side folio 50a)

EXHIBIT "A"


CORRECTED TO AUG 1942 BY J.T.J.
COTTON PLANT WAREHOUSE (N°5)
HIGHWAY
Office
D.H.
6" W.P.
8"
6'
U.HYD.

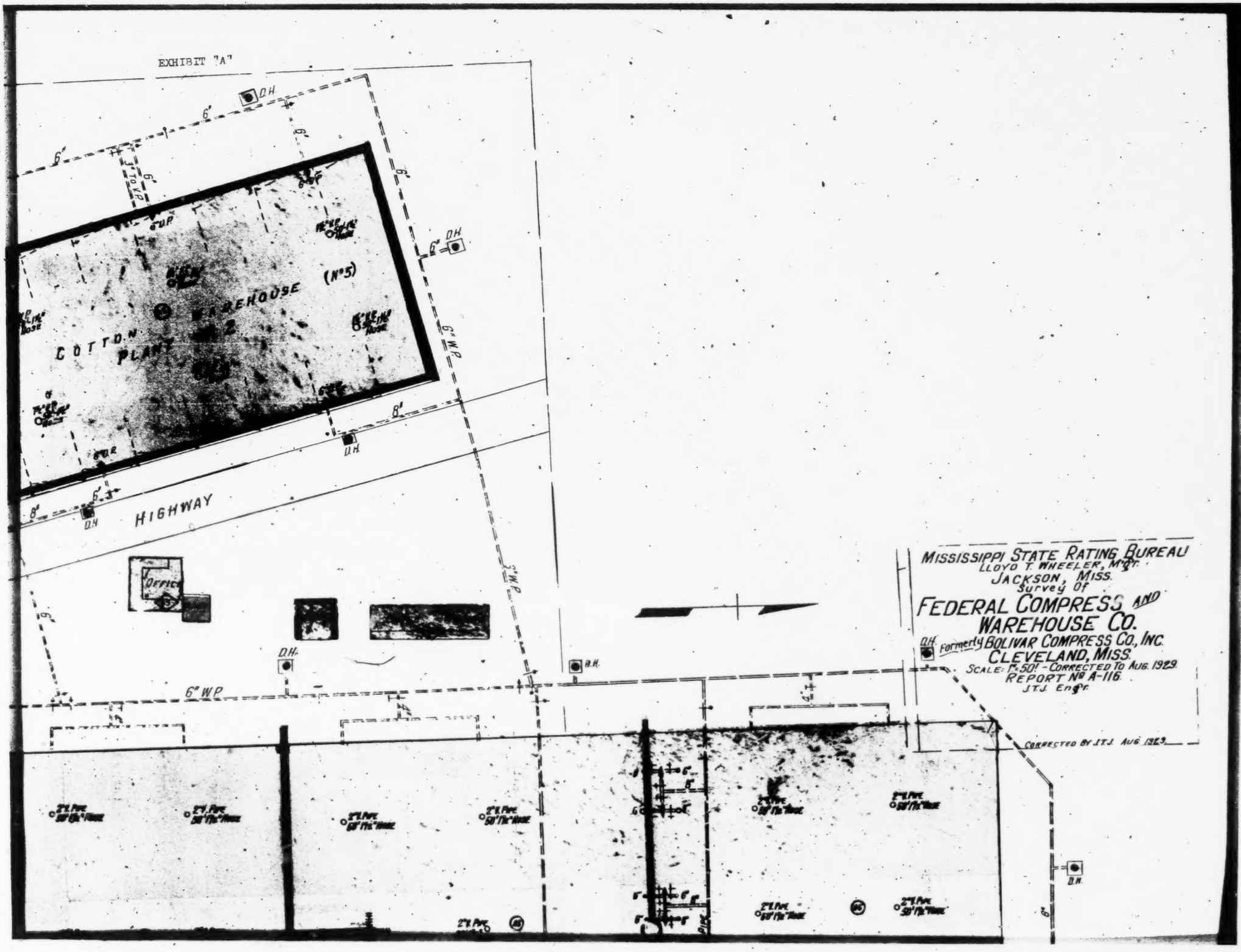
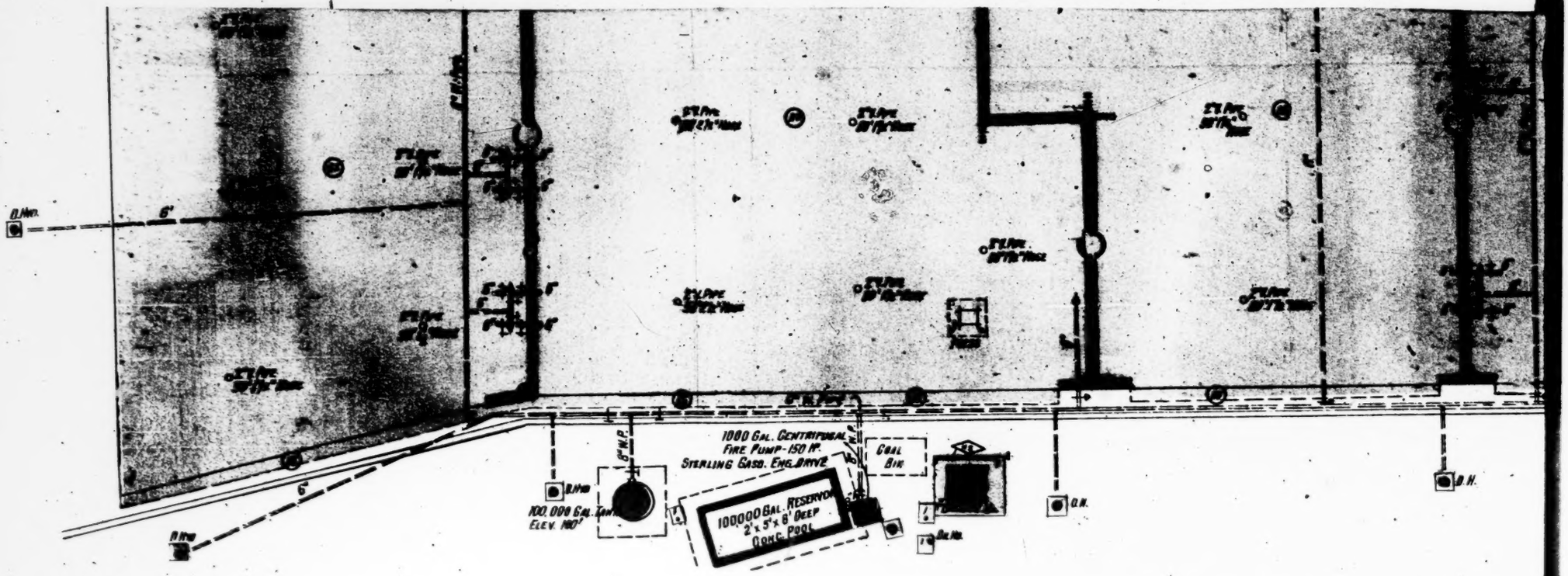
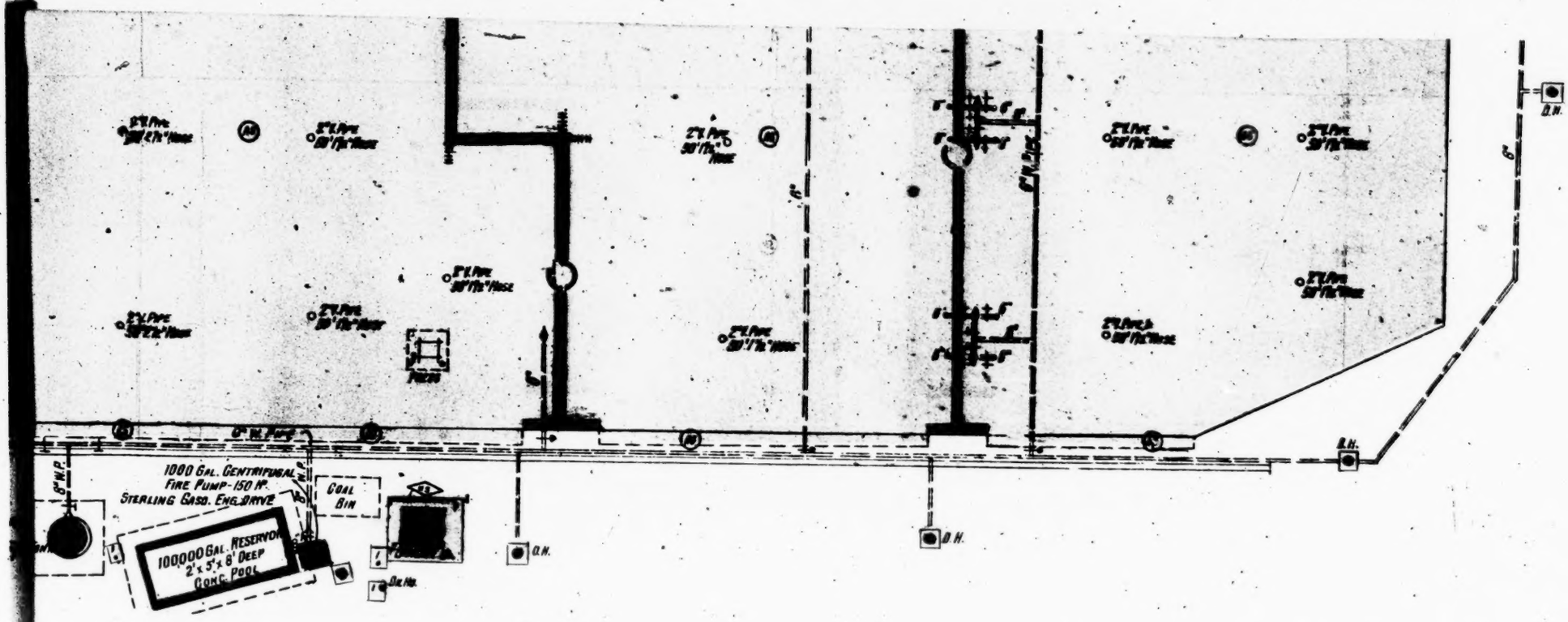


EXHIBIT "A"
D.H.
6'
3' To W.P.
6" W.P.
8'
COTTON PLANT
WAREHOUSE
(No 5)
HIGHWAY
Office
D.H.
6" W.P.
MISSISSIPPI STATE RATING BUREAU
LLOYD T. WHEELER, Mgr.
JACKSON, MISS.
Survey of
FEDERAL COMPRESS AND WAREHOUSE CO.
Formerly BOLIVAR COMPRESS CO., INC.
CLEVELAND, MISS.
SCALE: 1"=50' - CORRECTED TO AUG. 1929.
REPORT No A-116.
J.T.J. Engr.
CORRECTED BY J.T.J. AUG. 1929.
2" V. Pipe
Dis.


D.Hyd.
6"
6"
6" W.P.
8" W.P.
1000 Gal. Centrifugal
Fire Pump - 150 H.P.
Sterling Gass. Eng. Drive
Coal
Bin
100000 Gal. Reservoir
2' x 5' x 8' Deep
Conc. Pool
D.H.
D.H.


1000 Gal. Centrifugal
Fire Pump-150 H.P.
Sterling Gaso. Eng. Drive
100000 Gal. Reservoir
2'x 5'x 8' Deep
Conc. Pool
Coal Bin
D.H.
D.H.
D.H.
6" W.P.
6" W.P.

50-A

[fol. 51] EXHIBIT "B"

AB—2M—9-29. V. P. ACCTG. 160-A

This agreement, made in duplicate and entered into this first day of February, A. D. 1930, between the Yazoo & Mississippi Valley Railroad Company, hereinafter called "Railroad Company," and Federal Compress and Warehouse Company, a corporation organized and existing under the laws of the State of Delaware and hereinafter called "Compress Company,"

Witnesseth:

That, Whereas, the situation leading to the making of this agreement is as follows:

The Compress Company owns and operates a cotton compress in the City, or in each of the Cities as the case may be, of Helena, Ark., Gibsland, Monroe and New Orleans, La., Clarksdale (plants # 1 and # 2), Cleveland, Drew, Greenwood, Grenada, Jackson (plants # 1 and # 2), Ruleville and Shaw, Miss., Memphis (Riverside and South Memphis plants), Tenn., and the Railroad Company owns or operates certain tracks which connect, directly or through connecting lines, its railroad with the premises and property of the Compress Company in said City or Cities.

[fol. 52] As used herein, the term "compress track" means the industrial track or tracks alongside the platforms of the Compress Company; and the term "cotton" means lint cotton and/or cotton linters, both in bales.

That by reason of the nature of cotton and the commercial practices and customs under which it is handled, and by reason of the conditions of buying, selling, storing and transporting it, and by reason of and for the general convenience of all concerned, the Railroad Company and the Compress Company agree and covenant to occupy and use jointly the property and premises of the Compress Company for the several purposes and to the extent hereinafter set forth:

The intent and purpose of this agreement, among other things, is to confirm the Compress Company as the Limited Agent of the Railroad Company for the purposes of receiving cotton from the Railroad Company, delivering cotton to the Railroad Company, loading and unloading cotton from and into the cars of said Railrad Company,

making proper delivery of cotton in the custody of said Compress Company so far as concerns the interest of the Railroad Company, and as principal to furnish the premises for the use of the Railroad Company as a cotton depot under and subject to all of the terms and conditions of this agreement and the lawfully published tariffs and regulations of the Railroad Company from time to time in effect with respect to the transportation and handling of cotton.

To give this agreement full force and effect it is mutually agreed and understood:

1. That the Railroad Company will pay for its use of the premises and property of the Compress Company as herein set forth, and for the several services herein re-
[fol. 53] ferred to, the sum of One Dollar ($1.00), in full for the term of this agreement, the receipt whereof is hereby duly acknowledged by the Compress Company, and that the Compress Company will set apart and designate within the premises of said Compress Company a place agreed to by the Railroad Company where the Railroad Company will receive the cotton described in Subdivision (a) of Section 2 hereof for the purposes of shipment.

2. As set out below, the Compress Company will promptly receive and receipt for, unload from cars, shelter when practicable, compress and load into cars, in order of receipt, or as may be otherwise directed by the Railroad Company, the following cotton:

(a) Cotton delivered by its owner to Compress Company for shipment. Compress Company agrees, when so directed by the owner, to load cotton into cars of Railroad Company when they are placed for this purpose alongside of compress platform, and delivery to the Railroad Company shall be complete when cotton is loaded into the car, loading certificate of Compress Company filed with the Railroad Company and complete shipping instructions given to the Railroad Company. Delivery by Compress to Railroad Company shall also be complete even though loading certificate of Compress Company has not been filed with Railroad Company and/or even though complete shipping instructions have not been given to

Railroad Company whenever a car containing cotton is moved by Railroad Company from place of loading.

(b) Cotton consigned to compress points on straight bill of lading. Compress Company agrees to receive from the Railroad Company cotton for account of consignee or owner whenever Railroad Company has placed the car containing such cotton alongside the compress platform and the delivery by Railroad Company to Compress Company shall be complete when the Compress Company has unloaded and checked same against a written statement of [fol. 54] the contents of such car furnished the Compress Company by the Railroad Company, checking to be done at the time of unloading from car and unloading to be done without discrimination among railroads and/or shippers.

(c) Cotton destined to compress points, consigned to "order", or in any other manner, which is to be held by the Compress Company for account of the Railroad Company until released by the Railroad Company. The Railroad Company may place the cars containing such cotton alongside the compress platform, and when the Railroad Company furnishes to the Compress Company a written statement of such cotton showing plainly that it is covered by "order" bill of lading or is for any other reason to be held for account of the Railroad Company, the Compress Company agrees to receive, unload and hold such cotton and to be responsible and liable to the Railroad Company for the loss thereof or damage thereto, occasioned in any manner howsoever other than by fire, the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or from natural shrinkage, until such cotton is released in writing by the Railroad Company.

(d) Cotton covered by through bills of lading delivered by the Railroad Company to the Compress Company for compression. The Compress Company agrees to receive and unload such cotton when cars containing the same are placed alongside compress platform and a written statement of said cotton is furnished to the Compress Company, and further agrees promptly to compress and reload such cotton and furnish to the Station Agent of the Railroad Company a loading certificate therefor. In no case shall the Compress Company hold such cotton to exceed

[fol. 55] forty-eight (48) hours without the consent of the Railroad Company, and the Compress Company further agrees to be responsible and liable to the Railroad Company for any loss thereof or damage thereto occasioned in any manner other than by fire, the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or from natural shrinkage, provided, however, that if the Compress Company shall be unable to handle cotton at any time by reason of congestion at or accident to its plant, the Compress Company has the right to cease temporarily to receive cotton referred to in subdivisions (b), (c) and (d) of this Section 2 from the Railroad Company at such compress where such inability exists during the continuance thereof, upon the Compress Company first serving written notice to that effect upon the Station Agent of the Railroad Company at such compress point, said notice, however, to apply only to cotton received by the Railroad Company at the points of shipment thereof after thirty-six (36) hours from 7.00 A. M. of the day following the service of such written notice upon said Station Agent. The Compress Company shall promptly give written notice to said Station Agent when its inability to so handle cotton will terminate.

3. The Compress Company agrees to promptly and carefully check all cotton at the time of unloading against the written statements delivered to it by the Railroad Company; to receipt to the Railroad Company for all cotton delivered by the Railroad Company to the Compress Company and to deliver the warehouse receipts to the Railroad Company when requested by the Railroad Company so to do and to promptly furnish to the Station Agent of the [fol. 56] Railroad Company at point of delivery written reports in detail of any discrepancies or damage.

4. Freight and other charges on inbound shipments, if correct, shall be paid by the Compress Company within forty-eight (48) hours after delivery of shipment to the warehouse of the Compress Company.

5. The Compress Company agrees to mark, or require the shipper to mark, each bale of cotton tendered to the Compress Company for shipment, described in Subdivision (a) of Section 2 hereof, in a manner satisfactory to the

Railroad Company. The Compress Company further agrees to restore stencil markings, and replace other markings, upon through cotton described in Subdivision (d) of Section 2.

6. The Compress Company agrees to promptly load cotton when directed by the Railroad Company, properly marked and compressed to comply with all applicable tariff and/or maritime regulations, into cars in quantities (whenever practicable), or not less than 75 bales in a 36-foot car 8½ feet high, other cars proportionately, and close end and side doors, strip and seal same with materials furnished by the Railroad Company, furnishing Railroad Company with written statement of the contents and markings thereon, and all loading certificates shall show any apparent deficiencies, blemishes or exceptions on cotton covered by same.

7. The Compress Company agrees to keep a record of seals on all cars containing cotton received from the Railroad Company and unloaded by the Compress Company, and a record of seals on all cars loaded with cotton by the Compress Company and which are to move out over the [fol. 57] rails of the Railroad Company.

8. The count made by the Railroad Company or by the connections of the Railroad Company at time shipments are so unloaded as being the correct count of the number of bales of cotton unloaded from any car under the seals of the Compress Company, at point where such seals are broken, shall be final and conclusive as between the parties hereto, for the purpose of this agreement, as to the number of bales of cotton loaded in said car. Said count to be promptly and carefully made, and in case of discrepancies, to be rechecked and differences reported to the Compress Company within sixty (60) days thereafter. That all claims arising hereunder shall be promptly settled by the Compress Company, and in any event within sixty (60) days after the rendition of same.

9. The Railroad Company will report promptly to the Compress Company, and hold subject to Compress Company's order, all cotton it checks over, or which is checked over and reported to the Railroad Company by its connections, under the Compress Company's seals; and on in-

structions from the Compress Company, cotton so checked over, which has been erroneously forwarded by the Compress Company will be forwarded dead-head astray while on the line of the Railroad Company, and further, the Railroad Company will request its connections to so forward said over cotton.

10. Compress Company agrees to report in writing at close of each month any cotton it checks over from Railroad Company and deliver on demand to Railroad Company and all such bales of cotton, received on said premises via Railroad Company at any previous time, which Compress Company shall at any time within said month have in its possession, custody or control at any place as an [fol. 58] "over", or to pay to Railroad Company the equivalent thereof in cash.

11. The Compress Company agrees to compress all cotton to a density of at least 22½ pounds per cubic foot and to place on each bale intended for export not less than eight bands and on all other bales not less than seven bands per bale. The Compress Company further agrees that the density of compression and the banding on shipments moving through ports will conform to the maritime regulations of the port through which the cotton moves and that the Compress Company will reimburse the Railroad Company for any expense incurred by reason of failure of the Compress Company to observe such regulations or by reason of the failure of the Compress Company to compress and securely band all cotton handled by it under the terms of this agreement.

12. Account of being unable to exactly place the responsibility for cotton arriving at ports with broken bands, the Compress Company agrees to pay fifty per cent and the Railroad Company fifty per cent of any expense incurred in the re-banding of such cotton.

13. The Compress Company guarantees that all certificates, receipts, loading tickets or similar documents issued by it, or by anyone in its employ authorized to issue same, are genuine and represent cotton actually in possession of the Compress Company, and further agrees that except as noted thereon each and every bale covered thereby is a merchantable bale and is in good condition. The Com-

press Company further covenants to hold the Railroad Company harmless against all loss, damage and expense, excepting any loss, damage or expense resulting from fire, the act of God, the public enemy, the authority of law, or [fol. 59] the act or default of the shipper or owner, or for natural shrinkage, which the Railroad Company may incur or be put to on account of the non-delivery by the Compress Company to the Railroad Company of the cotton covered by the certificates, receipts, loading tickets or similar documents of the Compress Company, or the delivery to any party whatever of cotton in violation of any of the terms and conditions of this agreement. The Compress Company shall also furnish to the local agent of the Railroad Company at the compress point, a list and signatures of all persons authorized by the Compress Company to issue such certificates, receipts, loading tickets or similar documents for account of the Compress Company, which said list shall at all times be kept corrected to date.

14. The condition of the cotton at the time it is checked out of the cars under the seals applied to the Compress Company shall be the test to determine whether the provisions of Sections 11 and 13 hereof have been complied with by the Compress Company.

15. The Railroad Company agrees to pay and the Compress Company to accept, in full payment, in so far as the Railroad Company is concerned, for all services hereunder the compression allowance authorized in the Railroad Company's current tariffs on cotton, compressed by the Compress Company for the Railroad Company's account and moved from the compress over the rails of the Railroad Company.

16. The Railroad Company will, during the life of this agreement, provide and maintain adequate fire insurance, for its own benefit and in its own name, covering all cotton [fol. 60] to be held by the Compress Company for account of the Railroad Company as specified in this agreement. The Compress Company will reimburse the Railroad Company the amount paid by the Railroad Company in premiums on such insurance covering cotton specified in Subdivision (d) of Section 2 hereof, for the period beginning when such cotton is unloaded and ending when it is compressed and reloaded.

17. The Compress Company will be, and is, responsible and liable to the Railroad Company for the loss of, or damage to all cotton whether compressed or not compressed, occasioned in any manner howsoever, other than by fire, the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage, while in the custody, possession or control or upon the premises of the Compress Company, in buildings, sheds, yards, platforms, or elsewhere, and whether actually or constructively delivered to the Compress Company, the responsibility and liability of the Compress Company under this contract to continue during and be limited to the responsibility and liability of the Railroad Company as a common carrier or warehouseman for said cotton until said cotton shall be loaded into cars as aforesaid and removed from the compress and premises of the Compress Company by the Railroad Company or is delivered to the owner.

In the event that the Compress Company shall at any time fail to do any of the matters and things as by it agreed to be done as set forth herein, the Compress Company shall indemnify the Railroad Company and save it harmless from all costs and expenses incurred by reason of failure of the Compress Company so to do, and shall reimburse and pay [fol. 61] to the Railroad Company any and all sums of money which the Railroad Company may be compelled to pay in any suit or suits arising therefrom.

18. The Compress Company agrees, when requested, to furnish to the Railroad Company reports and certified statements of the number of bales of cotton on its premises, showing, first the number of bales held for the Railroad Company; second, the number of bales held for account of each other interested carrier, if any; third, the number of bales held for other accounts, also the total number of bales of cotton compressed during each month, and the total number, if any, of bales of cotton already compressed received at the compress each month.

The Compress Company further agrees that the premises of the Compress Company and all books, accounts, records and papers of the Compress Company referring to or in any manner connected with the receipt, compression, unloading, loading and delivery by the Compress Company of cotton under the terms of this agreement shall be open at all times during the term hereof to the inspection of any

duly authorized representative or representatives of the Railroad Company.

19. This agreement shall be and remain in full force and effect between the parties hereto and their respective successors and assigns, from and after the date hereof, and continue in full force and effect until the end of sixty (60) days after either party hereto shall have served upon the other, notice in writing, of its election to terminate the same; Provided, however, that the Compress Company may, at its option, close any compress covered by this agreement sixty (60) days after the service of notice in writing upon [fol. 62] the Station Agent of the Railroad Company at the compress point of its desire and intention so to do, and at the expiration of sixty (60) days after the service of such notice all obligations of the Compress Company to receive and handle cotton at the compress designated in such notice shall cease and determine; and provided, further, that in case of the total or substantial destruction by fire or other casualty of any compress operated hereunder, which shall render it inexpedient, in the opinion of the Compress Company, to rebuild such compress, the Compress Company may, at its option, terminate this agreement as to such compress by giving written notice of such termination to the Station Agent of the Railroad Company at the compress point, but it is further expressly understood and agreed that the termination of this agreement as to any compress by either of the methods herein provided shall not operate in any manner howsoever to release or relieve said Compress Company, or the surety on the bond provided for in Section 20 hereof, from any liability to the Railroad Company theretofore accruing in any manner howsoever.

20. The Compress Company will provide and continuously maintain during the term of this agreement a bond duly executed by said Compress Company to the Railroad Company with surety thereon, approved by the Railroad Company, and in form satisfactory to the Railroad Company, in the sum of (see special bond) dollars ($—), conditioned upon, and to cover and provide for the full and faithful performance by the Compress Company of all its covenants and obligations in this agreement contained, and for the protection of the Railroad Company from any and all loss, damage, cost or expense, by reason of any breach of said

covenant or failure by the Compress Company to perform its obligations hereunder or any of them, such bond to be [fols. 63-76½] immediately filed with the Railroad Company and to be renewed or extended or increased in amount as the said Railroad Company may from time to time require.

In witness whereof, the parties hereto have caused this agreement to be executed by their proper officers thereunto duly authorized, respectively and their respective corporate seals to be hereto attached and attested, the day and year first above written.

The Yazoo & Mississippi Valley Railroad Company, by G. J. Bunting, its Vice-President. Attest: Burt A. Beck, Assistant Secretary. Federal Compress and Warehouse Company, by R. L. Taylor, Its President. Attest: V. E. Lundy, Secretary.

EXHIBIT C

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY Form Y-166-4

CONSIGNEE AND DESTINATION

CASHIER'S MEMORANDUM

Staple Cotton Coop Assn Care Comp

STATION: Cleveland Miss DATE: 12.16.31.

ROUTE—POINT OF ORIGIN TO DESTINATION:

FREIGHT BILL NUMBER: 402-

WAYBILLED FROM	WAYBILL DATE AND NUMBER	FULL NAME OF SHIPPER	CAR INITIALS AND NUMBER
Cleveland Miss.	12.14.31. C-22	RM Dakin, Laughlin, Miss.	Ic 330430-

POINT AND DATE OF SHIPMENT	CONNECTING LINE REFERENCE	PREVIOUS WAYBILL REFERENCE	ORIGINAL CAR INITIALS AND NUMBER

NUMBER OF PACKAGES, ARTICLES AND MARKS	WEIGHT	RATE	FREIGHT	ADVANCES	TOTAL
36 Bales Flat Cotton , Marked (D	18023	.17	30; 64		30.64

3590 ✓ 3613 ✓ 3630 ✓ 3625 ✓
3594 ✓ 3614 ✓ 3631 ✓ 3629 ✓
3595 ✓ 3617 ✓ 3632 ✓
3596 ✓ 3618 ✓ 3633 ✓
3597 ✓ 3619 ✓ 3634 ✓
3598 ✓ 3620 ✓ 3635 ✓
3600 ✓ 3621 ✓ 3636 ✓
3602 ✓ 3622 ✓ 3637 ✓
3603 ✓ 3624 ✓ 3638 ✓
3605 ✓ [illegible] 3623 ✓
3607 ✓ 3628 ✓ 3626 ✓
~~3612 ✓~~ ~~[illegible]~~ ~~3627 ✓~~

Certified

COPY of Original, Dated Dec. 16.th 1931

H P Gueymard

Agent.

Total Prepaid $_____ TOTAL

Make Checks Payable to THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY

THE SOUTH AND WEST

76-"A"

EXHIBIT "D"

WEIGHT SHEET

Received at FEDERAL COMPRESS & WAREHOUSE CO.

CLEVELAND, MISSISSIPPI

Pkg. Cleveland, Miss. #402-12-16 32 Bales 330430

For Account of Staple Cotton Cooperative Assn

Covered by B-L No. _____ Date 12-16-31 From Laughlin Miss

DATE	PLANTERS Mark	PLANTERS Number	TAG NUMBER	WEIGHT	REMARKS
	D	3612	388432	510	
	K	6321	433	365	
	D	3630	434	405	
		3607	436	508	
		622	437	445	
		3605	438	446	
		3623	439	410	
		3614	440	468	
		3618	441	375	
		3617	442	340	
		3619	443	545	
	K	3602	444	391	
	D	2620	445	555	
	K	3629	446	521	
		594	447	645	
	D	597	448	433	
		596	449	445	
		3627	450	445	
		3628	451	417	
		3624	452	310	
		3634	453	470	
		3635	454	473	
		3636	455	558	
		3633	456	466	
		3625	457	588	Original Receiving Wts
		3638	458	516	
		3632	459	560	
		3637	460	467	
		3621	461	578	
		2600	462	491	
		3603	463	482	
		613	464	485	
		3626	465	481	
		590	466	545	
		595	467	620	
		578	468	570	

We hereby certify that we have received the above noted Cotton.

FEDERAL COMPRESS & WAREHOUSE CO.

By _____ Weigher

STANDARD-MEMPHIS 19617

76-"B"

EXHIBIT "D"

E PASTERS HERE

Form Y 410

873—The Yazoo & Mississippi Valley Railroad Company—873

TRANSIT FREIGHT WAYBILL

THIS CAR AT | FOR | WEIGHT IN TONS: Gross | Net

INITIALS AND NUMBER: 249 √√0 | C. L. Transferred to or L. C. L. Loading No.

DATE: 1/14/32 | WAYBILL NO.: T-11

STATION: Indville | STATE: Miss

FROM | STATION | STATE

Show each Junction and Carrier in Route Order to ... of Waybill. Indicate by Check Mark whether Shipper's or Agent's Routing.) | Shipper's Routing | Agent's Routing: C N L

C-B ham Ill-Cent.

ADDRESS (Final Destination and Additional Routing.)

Shipper's Joanna Cotton Mills

NO. ( )

FULL NAME OF SHIPPER (Origin and Date, Original Car, Transfer Freight Bill and Previous Waybill Reference and Routing When Rebilled.)

Staple Cotton Cooperative Assn 1/29/32

Length of Car: Ordered	Furnished	Marked Capacity of Car: Ordered	Furnished	Stenciled Weight of Car

#

WEIGHED

AT

This is to certify that this a true and exact copy of original waybill.

GROSS

TARE

ALLOWANCE H. O. Gilliland, agent

NET

This Waybill may be used for all single consignments, whether carload or less carload and whether local or interline.

...ONS (Regarding Icing, Ventilation, Milling, Weighing, Etc. If Iced Specify to Whom Icing Should be Charged.)

Indicate by symbol in column provided ★ how weights were obtained for L. C. L. Shipments only.
R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct.

DESCRIPTION OF ARTICLES AND MARKS	Commodity No.	★	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID
37 Bales Compressed Cotton				14-Pd			
Marked VA N P/N			123√	15-Comp			
				√-8			
			18023	17-Pd			
				15-Comp			
				60			
			120	15 comp		89 07	
				77			
			19378		116 22		145 √

DESTINATION AGENT'S FREIGHT BILL NO.

Copy

INBOUND REFERENCE

Bureau No.	POINT OF ORIGIN AND ROAD	WAYBILL Date	WAYBILL No.	LAST WAYBILLING STATION	WAYBILL Date	WAYBILL No.	WAYBILLING ROAD AND ROUTE	Commodity	Weight Applied Outbound	Rate Paid
	Pace Miss	10/12/31	77		Pro	428		123√		1.
	Langhlin Miss	12/14/31	C-77		√	407		18025		1-

ALL YARD STAMPS TO BE PLACED ON BACK OF WAYBILL IN SPACES PROVIDED

Junction Forwarding Agents will show Junction Stamps in the Space and Order Provided Below:

FIRST JUNCTION	SECOND JUNCTION	THIRD JUNCTION	FOURTH JUNCTION

Additional Junction Agents' Stamps Must be Shown on Back of Waybill in Space Provided.

Destination Agent Will Stamp Herein Station Name and Date Reported.

873—THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY—873

76b-1

YARD STAMPS TO BE PLACED IN CONSECUTIVE ORDER BELOW

1	2	3
4	5	6
7	8	9
10	11	12

Additional junction agents stamps will be shown in spaces and order provided below

5th Junction	6th Junction	7th Junction
8th Junction	9th Junction	10th Junction

76b-2

7-28-F. C. 1-19-27
SPECIAL SERVICE PASTERS HERE

Form Y 410

873—The Yazoo & Mississippi Valley Railroad Company—873

TRANSIT FREIGHT WAYBILL

THIS CAR AT | FOR | WEIGHT IN TONS: Gross | Net

INITIALS AND NUMBER | C. L. Transferred to or L. C. L. Loading No.

STATION | STATE

ROUTE (Show each Junction and Carrier in Route Order to Destination of Waybill. Indicate by Check Mark whether Shipper's or Agent's Routing.)

Shipper's Routing

Agent's Routing

CONSIGNEE, ADDRESS (Final Destination and Additional Routing.)

INSTRUCTIONS (Regarding Icing, Ventilation, Milling, Weighing, Etc. If Iced, Specify to Whom Icing Should be Charged.)

This Waybill may be used for all single components, whether carload or less carload and whether local or interline

DATE | WAYBILL NO.

FROM | STATION | STATE

NO. ( )

FULL NAME OF SHIPPER (Origin and Date, Original Car, Transfer Freight Bill and Previous Waybill Reference and Routing When Rebilled.)

Length of Car: Ordered	Length of Car: Furnished	Marked Capacity of Car: Ordered	Marked Capacity of Car: Furnished	Stenciled Weight of Car

WEIGHED

AT.....

GROSS.....

TARE.....

ALLOWANCE.....

NET.....

Indicate by symbol in column provided ★ how weights were obtained for L. C. L. Shipments only.
R—Railroad Warehouse Scale. S—Shipper's Agreement or Tested Weights. E—Estimated—Weigh and Correct.

DESCRIPTION OF ARTICLES AND MARKS	Commodity No.	★	WEIGHT	RATE	FREIGHT	ADVANCES	PREPAID

DESTINATION AGENT'S FREIGHT BILL NO.

Bureau No.	INBOUND REFERENCE: POINT OF ORIGIN AND ROAD	WAYBILL: Date	WAYBILL: No.	LAST WAYBILLING STATION	WAYBILL: Date	WAYBILL: No.	WAYBILLING ROAD AND ROUTE	Commodity	Weight Applied Outbound	Rate Paid

AGENT'S COPY

THIS COPY TO BE RETAINED BY ISSUING AGENT AS STATION RECORD

79

76b-3 69

(A.-E. 50M Sets F.C.-6-30) Form Y-194-B

(Uniform Domestic Order Bill of Lading, adopted by Carriers in Official, Southern and Western Classification territories, March 15, 1922, as amended August 1, 1930.)

THIS SHIPPING ORDER must be legibly filled in, in Ink, in Indelible Pencil, or in Carbon, and retained by the Agent.

Shipper's No. 9002-
Agent's No. 90

The Yazoo and Mississippi Valley Railroad Co.

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Shipping Order.

At Cleveland Miss 1-14 192

From Staple Cotton Coop. Assn.

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

The surrender of the Original ORDER bill of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by the bill of lading will not be permitted unless provided by law or unless permission is indorsed on the original bill of lading or given in writing by the shipper.

Consigned to ORDER of Goldville Shipping

Destination Goldville State of Miss. County of

Notify Federal Cotton Mills

At Goldville State of Miss. County of

Route A & V Blum 90 C N O & T Lat Clinton

Delivering Carrier Car Initial C Car No. 249550

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
37	Bales Comp Cotton	1937		
	Mkd Y & M P/M			
	Ef Call	1235	73	
	Ef Laughlin	1823	75	
	Tonnage	120	97	

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Prepaid

Received $ 145.29 to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per (The signature here, acknowledges only the amount prepaid.)

Charges Advanced:

$

* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding ..... per .....

Staple Cotton Coop Ass'n Shipper. Agent.

Per Per H. C. GILLILAND

Permanent postoffice address of shipper 80

76b-4

CONTRACT TERMS AND CONDITIONS

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party, entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: **Provided,** That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: **Provided,** That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: **Provided,** That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: **Provided,** That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and, except in case of carrier's negligence, when received from or delivered to such stations, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. **Provided, that,** where the carrier has been instructed by the shipper or consignor to deliver said property to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in said property, and (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges. Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General Average shall be payable according to the York-Antwerp Rules of 1924, Sections 1 to 15, inclusive, and Sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the owners in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

76b-5

(A.E. 50M Sets · F.C.-6-30) Form Y-194-3

(Uniform Domestic Order Bill of Lading, adopted by Carriers in Official, Southern and Western Classification territories, March 15, 1922, as amended August 1, 1930.)

3 **THIS MEMORANDUM** is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

Shipper's No. 9002-
Agent's No. 90

The Yazoo and Mississippi Valley Railroad Co.

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading,

At Cleveland Miss 1-14- 192

From Staple Cotton Coop Assn

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

The surrender of the Original ORDER bill of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by the bill of lading will not be permitted unless provided by law or unless permission is indorsed on the original bill of lading or given in writing by the shipper.

Consigned to ORDER of Shipper

Destination Coldwater State of Miss County of

Notify Yazoo Cotton Mills

At Memphis State of Tenn County of

Route L & N & Brans to Cin & Lex Clinton

Delivering Carrier Car Initial IC Car No. 24950

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
37	Staple Cotton Compressed	19378		
	Mkd Y & M P/M.			
	6 Bales	1235	23	
	2 Laughlin	1823	75	
	1 Sundry	120	92	

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Prepaid.

Received $ 145 29 to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per (The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$

* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding per

Staple Cotton Coop Assn Shipper. Agent.

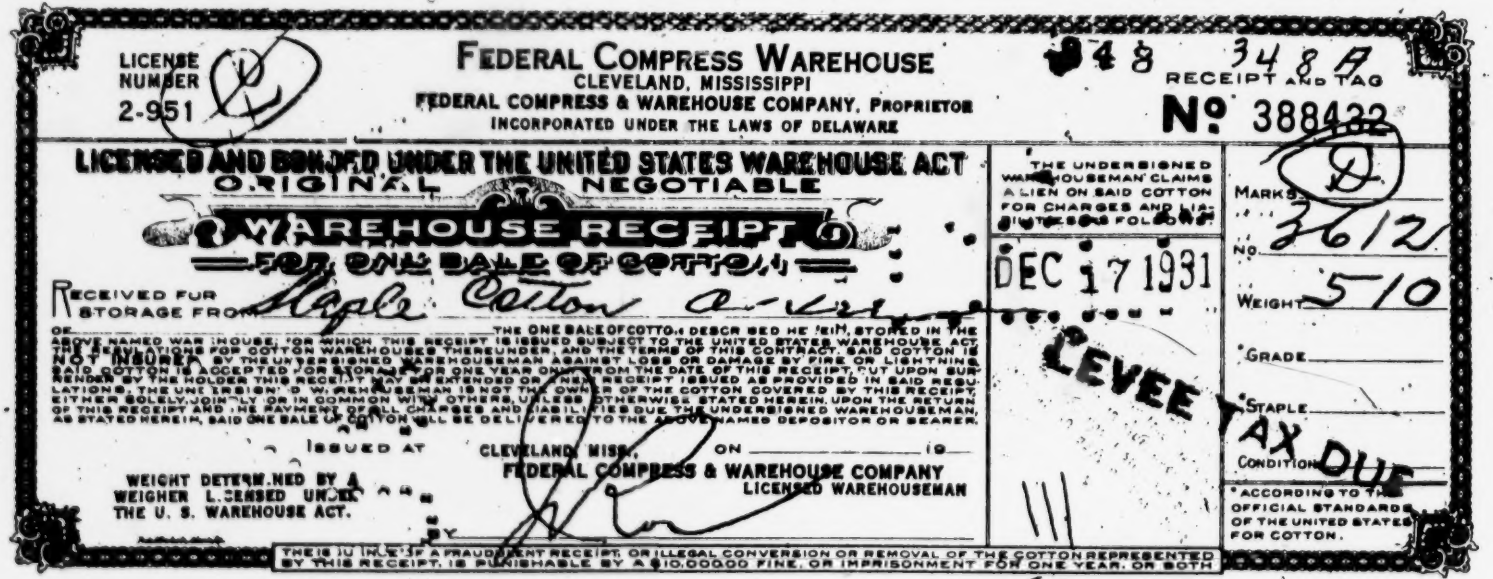
Per Per

Permanent postoffice address of shipper H. G. GILLILAND

J. J. COLLINS' SONS, INC., PRINTERS, CHICAGO.

76b-6

102



LICENSE NUMBER 2-951

FEDERAL COMPRESS WAREHOUSE

CLEVELAND, MISSISSIPPI

FEDERAL COMPRESS & WAREHOUSE COMPANY, PROPRIETOR

INCORPORATED UNDER THE LAWS OF DELAWARE

348 348A RECEIPT AND TAG

No 388432

LICENSED AND BONDED UNDER THE UNITED STATES WAREHOUSE ACT

ORIGINAL NEGOTIABLE

WAREHOUSE RECEIPT

FOR ONE BALE OF COTTON

THE UNDERSIGNED WAREHOUSEMAN CLAIMS A LIEN ON SAID COTTON FOR CHARGES AND LIABILITIES AS FOLLOWS:

DEC 17 1931

LEVEE TAX DUE

RECEIVED FOR STORAGE FROM Staple Cotton Coop

MARKS D

NO. 3612

WEIGHT 510

GRADE

STAPLE

CONDITION

OF THE ONE BALE OF COTTON DESCRIBED HEREIN, STORED IN THE ABOVE NAMED WAREHOUSE, FOR WHICH THIS RECEIPT IS ISSUED SUBJECT TO THE UNITED STATES WAREHOUSE ACT, THE REGULATIONS FOR COTTON WAREHOUSES THEREUNDER, AND THE TERMS OF THIS CONTRACT. SAID COTTON IS NOT INSURED BY THE UNDERSIGNED WAREHOUSEMAN AGAINST LOSS OR DAMAGE BY FIRE OR LIGHTNING. SAID COTTON IS ACCEPTED FOR STORAGE FOR ONE YEAR ONLY FROM THE DATE OF THIS RECEIPT, BUT UPON SURRENDER BY THE HOLDER THIS RECEIPT MAY BE EXTENDED OR A NEW RECEIPT ISSUED AS PROVIDED IN SAID REGULATIONS. THE UNDERSIGNED WAREHOUSEMAN IS NOT THE OWNER OF THE COTTON COVERED BY THIS RECEIPT, EITHER SOLELY, JOINTLY OR IN COMMON WITH OTHERS, UNLESS OTHERWISE STATED HEREIN. UPON THE RETURN OF THIS RECEIPT AND THE PAYMENT OF ALL CHARGES AND LIABILITIES DUE THE UNDERSIGNED WAREHOUSEMAN, AS STATED HEREIN, SAID ONE BALE OF COTTON WILL BE DELIVERED TO THE ABOVE NAMED DEPOSITOR OR BEARER.

ISSUED AT CLEVELAND, MISS., ON _____ 19__

WEIGHT DETERMINED BY A WEIGHER LICENSED UNDER THE U. S. WAREHOUSE ACT.

FEDERAL COMPRESS & WAREHOUSE COMPANY
LICENSED WAREHOUSEMAN

BY

*ACCORDING TO THE OFFICIAL STANDARDS OF THE UNITED STATES FOR COTTON.

THERE IS IN IT A PENALTY OF A FRAUDULENT RECEIPT, OR ILLEGAL CONVERSION OR REMOVAL OF THE COTTON REPRESENTED BY THIS RECEIPT, IS PUNISHABLE BY A $10,000.00 FINE, OR IMPRISONMENT FOR ONE YEAR, OR BOTH

82

76-C

EXHIBIT "E"

103

EXHIBIT "F"

Shipping Order for

Federal Compress & Storage Co.

Cleveland Miss. MISS. 1-18 19 37

Please Mark [VATP-M 27] Compress and

deliver to GM&N Ry. Company the undernoted

Bales of Cotton for shipment to Mays Landing NJ on

STAPLE COTTON COOPERATIVE ASSOCIATION

| | | |

(A.E. 50M Sets-5-31 F.C.-6-30) Form Y-194-3

(Uniform Domestic Order Bill of Lading, adopted by Carriers in Official, Southern and Western Classification territories, March 15, 1922, as amended August 1, 1930.)

1

UNIFORM ORDER BILL OF LADING

ORIGINAL

Shipper's No. 9007

Agent's No. 104

The Yazoo and Mississippi Valley Railroad Co.

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,

At Cleveland Miss Jan 18 1932

From Staple Cotton Coop Assn

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER bill of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.

Consigned to ORDER of Shippers

Destination Mays Landing State of N J County of

Notify Mays Landing Water Power Co

At Mays Landing State of NJ County of

Route

Delivering Carrier Peoria TP&W Wabash C/O Penn Car Initial IC Car No. 157948

No. Packages	DESCRIPTION OF ARTICLES, SPECIAL MARKS, AND EXCEPTIONS	*WEIGHT (Subject to Correction)	Class or Rate	Check Column
27	Bales Compressed Cotton	13910		
	Marked V A T P / M			
	Ex Laughlin Miss	13910	1.00	

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

To Be Prepaid

Received $ 139.10 to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$

* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding ..... per .....

Staple Cotton Coop Assn Shipper. ILAND Agent.

Per Per

Permanent postoffice address of shipper

J. J. COLLINS' SONS, INC., PRINTERS, CHICAGO

76e-1

105

Endorsements

CONTRACT TERMS AND CONDITIONS

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party, entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: **Provided,** That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: **Provided,** That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: **Provided,** That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: **Provided,** That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and, except in case of carrier's negligence, when received from or delivered to such stations, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. **Provided, that,** where the carrier has been instructed by the shipper or consignor to deliver said property to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in said property, and (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges. Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of the Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General Average shall be payable according to the York-Antwerp Rules of 1924, Sections 1 to 15, inclusive, and Sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

C—11-30—60M—FC—4-30 991 Form Y-198-A Revised 5-1-30

Bill of Lading Signature Certificate No.....

Through Bill of Lading issued in conformity with agreement with the Liverpool Cotton Bills of Lading Conference (1907) Committee and the American Bankers Association.

UNIFORM THROUGH EXPORT BILL OF LADING

(Prescribed in Interstate Commerce Commission Orders of October 21, 1921, January 30, 1922, March 7, 1922, July 8, 1922, June 6, 1923, and June 21, 1928, in Docket No. 4844)

COPY OF ORDER BILL OF LADING—NOT NEGOTIABLE

The Yazoo and Mississippi Valley Railroad Company

IN CONNECTION WITH OTHER CARRIERS ON THE ROUTE

Export Bill of Lading No. 60 Lot No. 9n Contract Numbers C- 3878

Dated at Cleveland Miss this 25 day of January, 1928.

Received, subject to the classifications and tariffs in effect on the date of the receipt of the property described in this bill of lading, at Cleveland Miss

From Staple Cotton Coop Assn

the following property, in apparent good order (contents and condition of contents of packages unknown), marked, numbered, consigned, and destined as indicated below:

Consigned to ORDER of Staple Cotton Coop Assn

Destination Manchester England

Route C/O Federal Barge Line at Vicksburg

Party to whom arrival notice is to be addressed Messrs Wigley White & Company Manchester England

MARKS AND NUMBERS	ARTICLES	*Weight (Subject to Correction)	Measurement (Subject to Correction)
G A A P / M 50	Fifty Bales Compressed Cotton	24593	Shippers
	Freight Prepaid Through		
	Inland Ex Shelby Miss 24527# @ 45¢		
	Inland Tonnage 66# @ 64¢	. 110	79
	Ocean 24593#@50¢	122	97
		233	76

CAR NUMBERS

IC 53866
IC 58298

COPY COPY COPY COPY COPY COPY

Received $.....to apply in prepayment of the charges on the property described herein.

.....Agent.

By.....

(The signature here only acknowledges the amount prepaid.

COPY

*U. S. Law requires Agent issuing Bill of Lading to write either "Shipper's" or "Carrier's" before "Weight."

To be carried to the port (A) of New Orleans La and thence by Dixie S/S Lines to the port (B) Manchester England (or so near thereto as vessel may safely get), and to be there delivered in like good order and condition as above consigned, or to consignee's assigns, or to another carrier on the route to destination if consigned beyond said port (B), upon payment immediately on discharge of the property of the freight thereon, at the rate (INLAND AND/OR COASTWISE) from Ponints Shown to New Orleans La of As above cents per one hundred pounds gross weight, port charges, if any.....cents, and (OCEAN AND ON-CARRYING) from New Orleans La Manchester England 50 cents, per 100 Lbs., and advanced charges.....($.....), with all other charges and average, without any allowance of credit or discount,.....settlement to be made on the basis of United States gold currency, amount to be paid by receivers at current rate of New York exchange as quoted on the day the vessel is entered at the Custom House at her port of discharge.

In consideration of the rate of freight herein named it is hereby stipulated that the service to be performed hereunder shall be subject to the contract terms and conditions, whether printed or written, herein contained, and said terms and conditions are hereby agreed to by the shipper and by him accepted for himself and his assigns.

CONTRACT TERMS AND CONDITIONS

Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading shall be without effect and this bill of lading shall be enforceable according to its original tenor. If shipment consists of cotton or cotton linters it is mutually understood and agreed that the description of the condition does not relate to insufficiency of or the torn condition of the covering, or to any damage resulting therefrom, and that no carrier shall be responsible for any damage of such nature. The vessel shall be at liberty to call at any port or ports in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs.

This bill of lading is not to be used on traffic from a point in the United States destined to an adjacent foreign country.

Part 1.—With respect to the service until delivery at the port (A) first above mentioned it is agreed that—

1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at the port of export, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations, or authorities, or for the carrier's dispatch, at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when the property is so discharged, or the property may be returned by carrier at owner's expense to shipping point, carrying freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to the property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities, even though the same may have been done by carrier's officers, agents, employees, or crew, nor for detention, loss or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable except in case of negligence for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

2.-(a) In issuing this bill of lading this company agrees to transport only over its own line and acts only as agent with respect to the portion of the route beyond its own line.

(b) No carrier shall be liable for loss, damage, or injury not occurring on its own road or its own water line or its portion of the through route, nor after said property has been delivered to the next carrier.

3. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and said port (A).

(b) The amount of any loss or damage, including loss or damage arising from delay for which any carrier is liable, shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if paid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

(c) Claims for loss, damage, or delay must be made in writing to the carrier at the port of export or to the carrier issuing this bill of lading within nine months after delivery of the property at said port (A), or, in case of failure to make such delivery, then within nine months after a reasonable time for such delivery has elapsed; and claims so made against said delivering or issuing carrier shall be deemed to have been made against any carrier which may be liable hereunder. Unless claims are so made the carrier shall not be liable.

(d) Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: Provided, That the carrier reimburse the claimant for the premium paid thereon.

4. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary trespassage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression.

(Continued on back)

76e-5

8. (a) Property not removed by the exporting carrier, or the party entitled to receive it, within the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at port (A) has been duly sent or given, and after placement of the property for delivery at port (A), or transfer of the property for delivery upon order of the party entitled to receive it has been made, may be kept in vessel, car, depot, or place of delivery of the carrier or warehouse, subject to the tariff charge for storage and to the carrier's responsibility as that of warehouseman only, or, at the option of the carrier, may be removed to and stored in any warehouse or licensed warehouse at port (A), or other available place at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage and [illegible]

(b) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and [illegible] in case of carrier's negligence, while received from or delivered to connecting carriers, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

4. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the article are indorsed hereon.

7. Every party, whether principal or agent, shipping explosives or dangerous goods, without previously giving full written information and securing the assent of the carrier, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

8. The owner or consignee shall pay the freight, and average, if any, and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If, upon inspection, it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

9. (a) If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of Congress of the United States, approved on February 13, 1893, and entitled "An Act relating to the navigation of vessels, etc.," and of other statutes of the United States according carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel or from explosion, bursting of boilers, or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned; equipped, and supplied, [illegible] for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances, [illegible] of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. Except in case of negligence, such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General average shall be payable according to the York-Antwerp Rules of 1924, sections 1 to 15, inclusive, and sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped, and supplied, it is hereby agreed, that in case of danger, damage, or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage, provided the latent defect or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees, and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo and shall contribute with the shipowner in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of the [illegible] carrier shall here be liable for loss or damage occasioned by fire from any cause or whatsoever occurring; by barratry of the master or crew; by enemies, pirates, or robbers; by arrest or restraint of princes, rulers or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, or unseaworthiness of the vessel, whether existing at time of shipment, or at the beginning of the voyage, provided the owners have exercised due diligence to make the vessel seaworthy; by fumigation under Government orders; by heating, frost, decay, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, vermin, or by explosion of any of the goods whether shipped with or without disclosure of their nature, or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for inland damage; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address, or description; nor for risk of craft, hulk, or trans-shipment; nor for any loss or damage caused by the prolongation of the voyage. The ocean carrier shall not be concluded as to correctness of statements herein of quality, quantity, gauge, contents, weight, and value.

10. (a) No carrier shall be liable for delay not occurring on its own line, or not the result of its negligence, nor in any respect other than as warehouseman, while the property awaits further conveyance after proper tender of delivery to the next connecting carrier has been made, and if the whole or any part of the property specified herein be prevented by any cause from going from the port of export in the vessel for which intended, the carrier hereunder then in possession is at liberty to forward said property by another vessel of the ocean carrier, or, if deemed necessary, by any other vessel, dispatching notice thereof to the shipper and consignee.

(b) It shall be the duty of the carrier by railroad to deliver such property to the vessel as a part of its undertaking as a common carrier.

Part II.—With respect to the service after delivery at the port (A) first above mentioned, and until delivery at the port (B) second above mentioned, it is agreed that—

1. (a) The vessel shall have liberty to sail with or without pilots; the ocean carrier shall have liberty to convey goods in craft and/or lighters to and from the vessel at the risk of the owners of the goods; and, in case the vessel shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to trans-ship the goods to their destination by any other vessel, dispatching notice thereof to the consignee, if named herein (at destination named), said otherwise to the shipper. The ocean carrier shall here be liable for loss or damage occasioned by fire from any cause or wheresoever occurring; by barratry of the master or crew; by enemies, pirates, or robbers; by arrest or restraint of princes, rulers or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, or unseaworthiness of the vessel, whether existing at time of shipment, or at the beginning of the voyage, provided the owners have exercised due diligence to make the vessel seaworthy; by fumigation under Government orders; by heating, frost, decay, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, vermin, or by explosion of any of the goods whether shipped with or without disclosure of their nature, or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for inland damage; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address, or description; nor for risk of craft, hulk, or trans-shipment; nor for any loss or damage caused by the prolongation of the voyage. The ocean carrier shall not be concluded as to correctness of statements herein of quality, quantity, gauge, contents, weight, and value.

(b) General average shall be payable according to the York-Antwerp Rules of 1924, sections 1 to 15, inclusive, and sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped, and supplied, it is hereby agreed that in case of danger, damage, or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees, and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

2. This shipment until delivery at the port (B) second above mentioned is subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled, "An Act relating to the navigation of vessels, etc." This shipment is subject to the provisions of Sections 4281-4286, inclusive, of the Revised Statutes of the United States.

3. (a) The value of each package shipped hereunder does not exceed two hundred and fifty dollars unless otherwise stated herein, on which basis the freight is adjusted, and the ocean carrier's liability shall in no case exceed that sum or the invoice value (including freight charges, if paid, and including duty if paid and not returnable), whichever shall be the lesser, unless a value in excess thereof be specially declared, and stated herein, and extra freight as may be agreed upon, paid. Any partial loss or damage for which the carrier may be liable shall be adjusted pro rata on the above basis.

(b) Notice of loss, damage, or delay must be given in writing to the carrier receiving the goods for transportation between Port A and Port B within 30 days after the removal of the goods from the custody of such carrier, or, in case of failure to make delivery, within 30 days after the goods should have been delivered; provided that if the loss or damage is apparent at the time of the removal of the goods from the custody of the carrier, the notice of loss, damage, or delay must be given before the goods are so removed, in which case notation of the loss or damage made on the receipt given to the carrier for the goods shall constitute the notice herein required. Written claim must be filed with such carrier within nine months after giving the aforesaid written notice. Unless such notice is given and claim filed as above provided, the carrier shall not be liable. No suit to recover for such loss damage, or delay shall be maintained unless instituted within one year after the giving of the written notice of loss, damage, or delay above provided for.

(c) The carrier shall not be entitled to the benefit of any insurance that may have been effected by the shipper upon the goods shipped thereunder.

4. Shippers shall be liable for any loss or damage to vessel or cargo, caused by inflammable, explosive, or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods so shipped may be thrown overboard or destroyed at any time without compensation.

5. The carrier shall have a lien on the goods for all freights and charges and any sums that may be due under this bill of lading, and also for all fines or damages which the vessel or cargo may incur or suffer by reason of the illegal, incorrect or insufficient marking, numbering or addressing of packages or description of their contents.

6. If the vessel is prevented from reaching her destination by Quarantine, the carrier may discharge the goods into any depot or lazaretto, under suitable available protection dispatching notice thereof to the consignee, if named herein (at destination named), and otherwise to the shipper, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

7. The vessel may commence discharging immediately on arrival and discharge continuously, any custom of the port to the contrary notwithstanding, the Collector of the Port or other proper officer being hereby authorized to grant a general order for discharge immediately on arrival, and if the goods be not taken from the vessel by the consignee directly they come to hand in discharging the vessel, the master or vessel's agent may, at liberty to enter and land the goods, or put them into craft or store at the owner's risk and expense, dispatching notice thereof to the consignee, if named herein (at destination named), and otherwise to the shipper, when the goods shall be deemed delivered and vessel's responsibility ended, but the vessel and carrier to have a lien on such goods until the payment of all costs and charges so incurred.

8. If on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the ocean carrier shall be entitled to recover the difference from the shipper, owner, or consignee. Full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage. Freight prepaid will not be returned provided the goods have been loaded on the vessel.

9. In the event of claims for [illegible] delivery when the vessel reaches her destination, the values shall be adjusted as per conditions under Clause 3, less all charges saved, vessel being responsible only for [illegible] of the goods as has been actually delivered to the vessel at the port (A) above mentioned, and vessel not liable for any loss or damage that may have occurred before such delivery, while agreeing to present promptly to inland carriers for account of owners of goods any claims for shortage or loss or damage that may have occurred before delivery of the goods at the port (A) above mentioned.

10. Goods on craft awaiting shipment of delivery shall not be at ocean carrier's risk of loss or damage not happening through the fault or negligence of the owner, master, agent or manager of the vessel, any custom of the port to the contrary notwithstanding.

11. This bill of lading, duly indorsed, shall be given up to the vessel's consignee in exchange for delivery order.

12. Freight payable on weight if to be paid on gross weight landed from ocean vessel, unless herein otherwise provided, or unless the carrier elects to take the freight on the bill of lading weight, but inland freight and charges paid on wheat, peas, maize, or other grain, or seed, or other bulk articles, from point of shipment to seaboard shall be paid by consignee at destination on the weight delivered on board ocean vessel.

13. If from any cause the whole or any part of the articles specified herein do not go in the vessel for which intended, the carrier shall forward them by other vessel or vessels employed by the ocean carrier, or by other vessels.

14. The property covered by this bill of lading is subject to all conditions expressed in the regular form of port bill of lading in use by the steamship company on the date of execution of this document and on file, in accordance with the rules and regulations of the United States Shipping Board and/or the Interstate Commerce Commission, but if any of such conditions are in conflict with conditions 1 to 15 of Part II of this bill of lading, the latter conditions shall control.

15. If the goods covered by this bill of lading are consigned hereunder beyond the port (B), the trans-shipment to connecting carrier shall be at the risk of the owner of the goods but at vessel's expense, and all liability of the ocean carrier hereunder terminates on delivery to connecting carrier.

Part III.—With respect to the service after delivery at the port (B) second above mentioned, said until delivery at ultimate destination if destined beyond that port, it is agreed that—

1. In case the regular vessel service to final port of delivery should for any reason be suspended or interrupted, the ocean carrier, at the option of the owner or consignee of the goods, or the holder of the bill of lading, may forward the goods to the nearest available port, this to be considered a final delivery; or to store them at the port (B) second above mentioned at the risk and expense of the goods until regular service to final port of destination is opened again.

2. The property shall be subject exclusively to all the conditions of the carrier or carriers completing the transit.

3. The addressing of arrival notice to the notify party shall be exclusively the obligation of the carrier completing the transit.

AND FINALLY, in accepting this bill of lading, the shipper, owner, and consignee of the goods, and the holder of the bill of lading, agree to be bound by all its stipulations, exceptions, and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee or holder.

IN WITNESS WHEREOF, the agent signing on behalf of the said THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPAN

of the said Ocean Carrier or Ocean Vessel and her owner, severally and not jointly, hath affirmed to

Bills of Lading, all of this tenor and date, one of which Bills being accomplished, the others to stand void.

.....Shipper.

.....Agent.

760-6

EXHIBIT "J"

Only one Supplement to this Tariff will be in effect at any time.

C. R. C. No. 795.
(For Cancellation refer to page 2.)

I. C. C. No. 6828.
(For Cancellation refer to page 2.)

The Yazoo and Mississippi Valley Railroad Company
Illinois Central Railroad Company
(SOUTHERN LINES)

4

444-G
(For Cancellation refer to page 2.)

Stamp Here Date Received.

LOCAL AND JOINT FREIGHT TARIFF

APPLYING ON

COTTON AND COTTON LINTERS OR REGINS

FROM STATIONS ON

The Yazoo and Mississippi Valley Railroad
(Indexed on Page 2.)

TO

CLEVELAND, MISS.

FOR

COMPRESSION AND SHIPMENT

TO

Eastern Cities, Interior Eastern and Canadian Points, New Orleans, La., Pacific Coast Points and Other Points Shown Herein.

CLASSIFICATION

Governed, except as otherwise provided herein, by Southern Classification No. 46, Agent E. H. Dulaney's I. C. C. No. 15, supplements thereto or reissues thereof.

ISSUED SEPTEMBER 12, 1924. EFFECTIVE OCTOBER 18, 1924.

ISSUED BY

JOSEPH HATTENDORF, General Freight Agent,
I. C. R. R. CO. (Southern Lines) and The Y. and M. V. R. R. CO.
MEMPHIS, TENN.

D. W. LONGSTREET,
Traffic Manager,
CHICAGO, ILL.

V. D. FORT,
Assistant Traffic Manager,
CHICAGO, ILL.

1500 (65186) COURIER-JOURNAL JOB PTG. CO., LOUISVILLE

76-g

CANCELLATION.

The rates and rules provided herein supersede rates and rules provided in Tariff No. 444-F, I. C. C. No. 6478, C. R. C. No. 732, EXCEPT THAT cotton and cotton linters or regins which moved, prior to October 18, 1924, from points of origin, shown on inbound paid freight bills surrendered, into Cleveland, Miss., and is shipped, compressed, from Cleveland, Miss., on and after October 18, 1924, is subject to the rates and rules provided in Tariff No. 444-F, I. C. C. No. 6478, C. R. C. No. 732.

The rates and rules provided in Tariff No. 444-G, I. C. C. No. 6828, C. R. C. No. 795, apply on cotton and cotton linters or regins which move on and after October 18, 1924, from points of origin shown on inbound paid freight bills surrendered.

ALPHABETICAL LIST OF POINTS OF ORIGIN.

STATION	Index No.	STATION	Index No.	STATION	Index No.
Aldridge Miss	40	Erots Miss	44	Niles Miss	88
Alligator "	4	Estill "	52	Nitta Yuma "	64
Anguilla "	68	Gill "	128	O'Reillys "	24
Appeal "	26	Gum Pond "	6	Overby "	58
Arcola "	48	Halstead "	106	Pace "	96
Barrow "	110	Head "	34	Panther Burn "	62
Benoit "	140	Helm "	32	Percy "	60
Bobo "	2	Hollandale "	56	Renova "	20
Bourbon "	120	Holly Knowe "	114	Riverside Junction "	72
Boyle "	22	Hushpuckana "	10	Rolling Fork "	74
Buelah "	130	Isenberg "	38	Shaw "	28
Burdette "	42	Jacobs "	86	Shelby "	12
Busey "	78	Kimball Lake "	100	Skene "	104
Brown's Spur "	116	Laughlin "	102	Symonds "	92
Byng "	134	Lees "	80	Trail Lake "	124
Cameta "	66	Littons "	84	Tribbett "	118
Choctaw "	30	Lobdell "	136	Turners "	82
Christmas "	132	Malvina "	90	Victor "	98
Clifford "	94	McCutcheon "	50	Warsaw "	54
Dahomey "	138	McGrath "	122	White City "	108
Dockery "	112	Merigold "	18	Wilmot "	46
Duncan "	8	Mont Helena "	70	Wyandotte "	14
Elizabeth "	36	Mound Bayou "	16	Yerger "	126
		Napanee "	76		

APPLICATION OF TARIFF.

(a) Except as otherwise specifically provided, cotton, cotton linters or regins (see paragraph (c)) may be forwarded via The Y. and M. V. R. R. from points of origin shown on page 6 to Cleveland, Miss. and reshipped via The Y. and M. V. R. R., from Cleveland, Miss. to points to which through rates are published from origins specified on page 6 to destinations, in the following tariffs, supplements thereto or reissues thereof.

I. C. C. No.	I. C. R. R. Co. AND THE Y. AND M. V. R. R. Co. TARIFF No.	ISSUED BY
A-473	13432-D	Agent J. H. Glenn.
A-466	13436-E	Agent J. H. Glenn.
A-388	13430-C	Agent J. H. Glenn.
A-365	13434-C	Agent J. H. Glenn.
1137	For. 376-X	Agent R. H. Countiss.
1130	4409-Q	Agent R. H. Countiss.
1129	4407-P	Agent R. H. Countiss.
6420	302-H	I. C. R. R. Co. The Y. and M. V. R. R. Co.

ALSO to destinations to which specific through rates are not provided in tariffs above mentioned and where through rates from origin to destination are constructed on the bases provided in Agent B. T. Jones' Freight Tariff 228, I. C. C. U. S.-1, supplements thereto or reissues thereof.

(b) Cotton, cotton linters or regins (see Paragraph (c)) may be forwarded via The Y. and M. V. R. R. from points of origin on The Y. and M. V. R. R. Index Numbers 2 to 38 inclusive, page 6 to Cleveland, Miss. and reshipped from Cleveland, Miss. to New Orleans, La., via The Y. and M. V. R. R., Vicksburg, Miss., and Mississippi-Warrior Service, to the extent that through rates are published from origins specified to New Orleans, La., proper or for export in the following Tariff, supplements thereto or reissues thereof.

I. C. C. No.	I. C. R. R. Co. AND THE Y. AND M. V. R. R. Co. TARIFF No.	ISSUED BY
A-66	13716-C	Agent W. M. Hough.

(c) Will not apply on shipments of 20,000 pounds or more of cotton linters or regins carloads.

110

76g-1

Charges resulting from rates in this schedule, or as amended, are subject to Agent F. L. Speiden's Tariff of Emergency Charges No. 250-A, I. C. C. 1616, supplements thereto or successive issues thereof

Supplement No. 19 to
C. R. C. No. 795
(Cancels Supplement No. 18)
(Supplement No. 19 contains all changes from the original Tariff that are effective on the date hereof)

Supplement No. 20 to
I. C. C. No. 6828
(Cancels Supplement No. 18)
(Supplements Nos. ①19 and 20 contain all changes from the original Tariff that are effective on the date hereof)

The Yazoo and Mississippi Valley Railroad Company

ILLINOIS CENTRAL SYSTEM — COURTESY EFFICIENT SERVICE ALWAYS

SUPPLEMENT No. 20
(Cancels Supplement No. 18)
(Supplements Nos. ①19 and 20 contain all changes from the original Tariff that are effective on the date hereof)

TO

444-G

FREIGHT TARIFF

OF

RULES AND REGULATIONS

APPLYING ON

COTTON

FROM STATIONS ON

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD
(INDEXED ON PAGE 2 OF TARIFF, AS AMENDED)

TO

CLEVELAND, MISS.

FOR

COMPRESSION AND SHIPMENT

TO

Eastern Cities, Interior Eastern and Canadian Points, New Orleans, La., Pacific Coast Points and Other Points Shown in Tariff and Herein

STAMP HERE

DATE RECEIVED

CLASSIFICATION

Governed, except as otherwise provided herein, by Southern Classification No. 49, Agent E. H. Dulaney's I. C. C. No. 34, and by supplements to or successive issues of said publication.

ISSUED MAY 20, 1932

EFFECTIVE JUNE 23, 1932
(Except as otherwise provided herein)

①Special Supplement—Emergency Charges.

Issued by

V. D. FORT
Freight Traffic Manager
CHICAGO, ILL.

J. L. SHEPPARD, General Freight Agent
135 East Eleventh Place
CHICAGO, ILL.

JOSEPH HATTENDORF
Assistant Freight Traffic Manager
CHICAGO, ILL.

(468)

(500) (22973) Cerley-Gunn—St. Louis (Printed in U. S. A.)

111

16g-2

[7]CANCELLATION

Transit privileges authorized in Tariff, and as amended, on Cotton Linters and Regins are hereby cancelled, account of no movement.

[11]APPLICATION OF TARIFF

(Cancels Application of Tariff as shown on page 2 of Supplement No. 10)

(a) Except as otherwise specifically provided, cotton may be forwarded via The Y. and M. V. R. R. from points of origin shown on page 6 of Tariff, and as amended, to Cleveland, Miss., and reshipped via The Y. and M. V. R. R. from Cleveland, Miss. to points to which through rates are published from origins specified on page 6 of Tariff, and as amended, to destinations in the following Tariffs, supplements thereto or successive issues thereof.

I. C. C. No.	I. C. R. R. Co. AND THE Y. AND M. V. R. R. Co. TARIFF No.	ISSUED BY
A-723	2406-D	Agent J. H. Glenn
1515	13432-G	Agent F. L. Speiden
A-692	13436-G	Agent J. H. Glenn
A-598	13430-D	Agent J. H. Glenn
A-661	13434-E	Agent J. H. Glenn
1272	For.-376-EE	Agent H. G. Toll
1277	16539-E	Agent H. G. Toll
1273	16677-D	Agent H. G. Toll
7462	302-K	I. C. R. R. Co.-The Y. and M. V. R. R. Co.
6484	304-I	I. C. R. R. Co.-The Y. and M. V. R. R. Co.
7222	204-F	The Y. and M. V. R. R. Co.

Also to destinations to which specific through rates are not provided in Tariffs above mentioned and where through rates from origin to destination are constructed on the bases provided in Agent B. T. Jones' Freight Tariff No. 228, I. C. C. No. U. S.-1, supplements thereto or successive issues thereof.

(b) Cotton may be forwarded via The Y. and M. V. R. R. from points of origin on The Y. and M. V. R. R. shown on page 6 of Tariff, and as amended, to Cleveland, Miss., and reshipped from Cleveland, Miss., to New Orleans, La., via The Y. and M. V. R. R., Vicksburg, Miss., and Mississippi-Warrior Service, to the extent that through rates are published from origins specified to New Orleans, La., proper or for export in the following Tariff, supplements thereto or successive issues thereof:

I. C. C. No.	I. C. R. R. Co. AND THE Y. AND M. V. R. R. Co. TARIFF No.	ISSUED BY
A-192	13716-I	Agent L. D. Chaffee

(c) Canceled.

RULES

The following Rules govern the handling of Uncompressed Cotton under this Tariff and as amended
To Be Compressed At
CLEVELAND, MISS.
And Forwarded Via

The Yazoo and Mississippi Valley Railroad or via The Yazoo and Mississippi Valley Railroad, Vicksburg, Miss., and Mississippi-Warrior Service as provided in "Application of Tariff" on page 2 herein.

[7]Rule 3 (Cancels Rule 3, page 2 of Supplement No. 6)

SURRENDER OF PAID FREIGHT BILLS

(a) When settlement is to be effected by claim as authorized in Rule 1, page 2 of Tariff, original paid freight bills covering inbound movement of uncompressed cotton from points of origin specified in Tariff, and as amended, must be attached to claims for refund to the basis authorized in Tariff, and as amended.

(b) Except as provided in paragraph (a) when compressed cotton is tendered for shipment from Cleveland, Miss., original paid freight bills covering inbound movement of uncompressed cotton from points of origin specified in Tariff, and as amended, must be surrendered to the railroad agent as evidence that such shipment is entitled, subject to the provisions of these rules, to the application of through rates authorized by Rule 5, page 3 of Tariff.

(c) Inbound paid freight bills surrendered must be representative of the outbound shipments, viz.:

When Outbound Shipments Consist Of	Inbound Paid Freight Bills Must Be Surrendered For
Compressed Cotton	Uncompressed Cotton

[13]Rule 6 (Cancels Rule 6, page 3 of Tariff)

SHIPMENTS TO PACIFIC COAST POINTS (For Export)

On cotton shipped from Cleveland, Miss., in carloads to Portland, Ore. (for export), San Francisco, Cal. (for export), Seattle, Wash. (for export), or Tacoma, Wash. (for export), the carload rates and minimum weight as published in Trans-Continental Tariffs Nos. 1-K, 4-H and 29-V, Agent H. G. Toll's I. C. C. No. 1273, C. R. C. No. 594, I. C. C. No. 1277, C. R. C. No. 596, and I. C. C. No. 1272, C. R. C. No. 593 (I. C. R. R. Co. Tariffs Nos. 16677-D, 16539-E and Foreign 376-EE), respectively, supplements thereto or successive issues thereof, will be applied from each point of origin as represented by the inbound paid freight bills surrendered, regardless of whether the cotton moved into Cleveland, Miss., in carloads or less carloads. (See Rule 5 (e), page 3 of Tariff.) Where back or circuitous hauls involved, charges and provisions of Rule 7, page 4 of Tariff, to be observed.

[7]**Reissued** from Supplement No. 7, effective December 15, 1927.
[11]**Reissued** from Supplement No. 11, effective August 28, 1929.
[13]**Reissued** from Supplement No. 13, effective November 28, 1929.

112

76g-3

RULES—Continued

RULE 8—(Cancels Rule 8, page 3 of Supplement No. 18)

TIME LIMIT ON PAID FREIGHT BILLS

"(a) The transit privileges authorized in this Tariff, supplements thereto and successive issues thereof, apply only when shipments are made from transit point within twelve (12) months next following the date of original paid freight bill covering the shipment inbound, except as provided in paragraph (b)."

"(b) In the event the transit users operating under the provisions of this Tariff are unable to avail themselves of the transit privileges authorized in this Tariff, supplements thereto and successive issues thereof, on freight bills bearing dates May 29, 1929, to July 31, 1930, within the limit named in paragraph (a) above, the time limit as provided in paragraph (a) will be extended to eighteen (18) months from date of paid freight bill covering inbound movement of Cotton, subject to the following conditions:

These rules do not include expense bills on which the time limit of twelve (12) months has already expired.

"Shippers desiring such extensions must make application to the carriers or to the Southern Weighing and Inspection Bureau in writing prior to the expiration of time limit of freight bills, as provided in paragraph (a), on which such extension is desired.

"A certified inventory showing the amount of Cotton then on hand must accompany such application.

"Upon receipt of application for extension of time limit the carriers shall verify such inventory and render invalid for reshipment under the terms of this Tariff such freight bills, if any, as are not represented by Cotton then on hand. In making such verification, inspector shall take into consideration those upon which the time limit is desired to be extended as well as all other freight bills against which outbound shipments have not been made in accordance with the tariffs.

"The time limit of such remaining freight bills as are represented by Cotton then on hand will then be extended to eighteen (18) months from date of such freight bills and the following notation shall be made on all freight bills so extended:

> "The time limit for transit of Cotton represented by this freight bill is hereby extended to eighteen (18) months, under the terms of Rule 8 of The Y. and M. V. R. R.-I. C. R. R. Tariff No. 444-G, I. C. C. No. 6828, supplements thereto or successive issues thereof.
>
> (Signed) _____
>
> Inspector"

(c) The time limit of freight bills provided in paragraphs (a) and (b) of this rule that are on December 19, 1930, available for transit and freight bills for shipments received at transit point to and including December 31, 1930, are hereby extended to and including December 31, 1931.

↓(1)(d) Freight bills which under the provisions published in Paragraphs (a), (b) and (c) of this rule are available for transit on December 31, 1931, will be accepted under these rules for reshipment on or before December 31, 1932; however, this provision will not include freight bills on which the time limit expired before June 1, 1932. (CO-262-385)

[3]**RULE 14—(Cancels Rule 14, page 4 of Tariff)**

EXCESS WEIGHT, DIFFERENCES IN WEIGHTS AND CREDIT SLIPS

If the weight of the outbound shipment exceeds the weight represented by the inbound paid freight bills, the excess weight is not entitled to transit rate, but will be charged for at the lawfully published rate from Cleveland, Miss., proper, to final destination. (The carload rates to apply as authorized in Rule 5, page 3 of Tariff.)

If the weight represented by the inbound paid freight bills surrendered is in excess of the transit weight of the outbound shipment the shipper will be given a credit slip for such excess weight, which may be used for shipment within the life of the freight bill of which such excess is a part; provided, however, no credit slip will be given for that weight which is lost through the process of sampling, etc., and provided, further, that no such credit slip will be given for less than five hundred pounds on any one paid freight bill.

RULE 15—(Cancels Rule 15, page 4 of Tariff)

COMPRESSING IN CASES OF EMERGENCY

The object and purpose of these rules is to permit the movement of Uncompressed Cotton, as provided herein, to Cleveland, Miss., for compression and shipment to destinations shown in this Tariff.

(a) If, however, highwater, breakdown, accident, damage, destruction by fire, receipts beyond capacity or other cause, renders compress unavailable for prompt service or inaccessible to The Yazoo and Mississippi Valley Railroad Company, The Yazoo and Mississippi Valley Railroad Company reserves the right to use any available or accessible compress without additional charge to shipper.

↓(b) In the event that threatened highwater or other emergency, shall make it necessary to move Uncompressed Cotton from some other compress or warehouse to the compress at Cleveland, Miss., for storage and/or compression and reshipment, such Cotton may be moved, at the option of The Yazoo and Mississippi Valley Railroad Company, as provided in Paragraphs (c) and (d) below, without additional charge to the shipper.

↓(c) Cotton will be waybilled from first compress point at tariff rates lawfully on file with Interstate Commerce Commission to Cleveland, Miss, and when the Compressed Cotton is shipped from Cleveland, Miss., through rates will be applied from original point of shipment to final destination, shown in tariffs lawfully on file with the Interstate Commerce Commission, after deducting total amount of charges as shown on paid freight bills surrendered.

↓(d) On Transit Cotton, the point from which Cotton was shipped into the first compress will be considered the point from which the through rate will be applied. Back haul charges, if any, applicable at first compress point, will be added to through rates and will accrue to The Yazoo and Mississippi Valley Railroad Company. (CO-262-363-B-1)

[10]**RULE 16—(Cancels Rule 16, page 5 of Tariff)**

RECORDS KEPT BY SHIPPERS AND INSPECTION BY CARRIER

The Yazoo and Mississippi Valley Railroad Co. will, through its duly appointed agents, make such investigation of the records of the shippers or their agents including compresses, accorded transit privileges as may be necessary and all shippers or their agents including compresses, accorded transit privileges as herein defined, shall keep record of receipts from all sources and of all dispositions of Cotton. Affidavit as to the accuracy of such records shall be furnished representatives of The Yazoo and Mississippi Valley Railroad Co. when required. In the event of failure or refusal on the part of shippers or their agents including compresses, to maintain such records, or in all particulars to conform to these rules transit privileges will be refused. (D. A.-84913) (File 79627)

↓Reduction.

(1)Effective June 1, 1932, in this supplement. Issued on ten (10) days' notice under Special Permission of the Interstate Commerce Commission No. 114241 of May 9, 1932.

[3]**Reissued** from Supplement No. 3, effective September 15, 1925.

[10]**Reissued** from Supplement No. 16, effective February 11, 1931.

RULES—Concluded

[12]**RULE 20—(Cancels Rule 20, page 2 of Supplement No. 11)**

INTERMEDIATE STATIONS, APPLICATION OF RATES, RULES OR REGULATIONS FROM

Commodity rates applicable from intermediate points.

Subject to the provisions of Notes 1, 2, 3 and 4 below, from any point of origin from which a commodity rate on a given article to a given destination and via a given route is not named in this Tariff, which point is intermediate to a point from which a commodity rate on said article is published in this Tariff via a route through the intermediate point over which such commodity rate applies to the same destination, apply from such intermediate point to such destination and via such route the commodity rate in this Tariff on said article from the next point beyond from which a commodity rate is published herein on that article to the same destination via the same route.

Note 1—When, by reason of branch or diverging lines, there are two or more "next beyond" points apply the rate from the next point beyond (in this Tariff) which on that article to the same destination via the same route results in the lowest charge.

Note 2—If the intermediate point is located between two points from which commodity rates on the same article via the same route are published in this Tariff apply via that route from the intermediate point the rate from the next point in either direction which results in the higher charge. In applying this note, if there are two or more next beyond points due to branch or diverging lines, eliminate all such next beyond points except the point from which the lowest rate applies.

Note 3—If the class rate on the same article via the same route from the intermediate point produces a lower charge than would result from applying the commodity rate under this rule, such commodity rate will not apply.

Note 4—If there is in any other tariff a commodity rate on the same article from the intermediate origin point applicable over the same route to the same destination, the provisions of this rule are not applicable from such intermediate origin point.

Exception—Hollandale, Leland, Shaw and Rosedale, Miss., not covered by this Rule.

[7]**RULE 22 (Cancels Rule 22, page 3 of Supplement No. 6)**

CERTIFICATE TO BE USED WHEN COMPRESSED COTTON IS SHIPPED IN THE NAME OF ANOTHER PARTY, FIRM OR CORPORATION

When for commercial reasons a shipper forwards Compressed Cotton in the name of another party, firm or corporation, the transit privileges authorized by this Tariff will be accorded only when the shipper actually making the shipment is entitled to such transit privileges, and then only when documents required by the rules of this Tariff are accompanied by certificate in the following form:

The outbound shipment of ..... (insert Compressed Cotton), covered by the bill of lading attached, is in fact made by the undersigned, but for commercial reasons, the bill of lading shows consignor as follows ..... (insert name of consignor shown on bill of lading).

.....

Signature of the actual shipper of the Compressed Cotton.

TABLE SHOWING IN MILES THE BACK OR CIRCUITOUS MILES VIA CLEVELAND, MISS., FROM POINTS OF ORIGIN TO POINTS OF DESTINATION COVERED BY THIS TARIFF TO BE USED IN DETERMINING THE AMOUNT TO BE ADDED TO THROUGH RATES UNDER RULE 7 OF TARIFF

(Cancels Mileages shown on page 6 of Tariff to the extent shown below)

GROUP 1—Includes the following:

(a) All points and ports in the United States and Canada north of an east and west line drawn through Cleveland, Miss., except as provided in Group 2.

(b) Southern points east of the Alabama-Mississippi State Line except Mobile, Ala., and Pensacola, Fla.

(c) Pacific Coast Points except points in California when routed through New Orleans, Baton Rouge, La., Natchez or Vicksburg, Miss.

GROUP 2—Includes the following:

(a) All points and ports south of an east and west line drawn through Cleveland, Miss., not included in Group 1.

(b) Albany, N. Y., Boston, Mass., New York, N. Y., Philadelphia, Pa., Utica, N. Y., and points taking same rates or arbitraries higher, when routed via New Orleans, La., in connection with Southern Pacific-Atlantic Steamship Lines "Morgan Line."

(c) Points in California, when routed via New Orleans, Baton Rouge, La., Natchez or Vicksburg, Miss.

For list of points of destination, see tariffs enumerated on page 2 of Tariff, and as amended.

Index No.	FROM TO	GROUPS 1 MILES	GROUPS 2 MILES
	VICKSBURG DIVISION		
	Cleveland District		
28	[10](1)Shaw ..... Miss.	.....	(1)
56	[8](1)Hollandale ..... Miss.	.....	(1)
	Helm District		
76	[16A](2)(3)Napance ..... Miss.	(2)(3)	(2)(3)
78	[16A](2)(3)Busey ..... Miss.	(2)(3)	(2)(3)
80	[16A](2)(3)Lees ..... Miss.	(2)(3)	(2)(3)
82	[16A](2)(3)Turners ..... Miss.	(2)(3)	(2)(3)
84	[16A](2)(3)Littons ..... Miss.	(2)(3)	(2)(3)
	[16A](2)(3)Jacobs ..... Miss.	(2)(3)	(2)(3)

(1)Eliminate.

(2)Issued in compliance with Certificate of Public Convenience and Necessity of the Interstate Commerce Commission in Finance Docket No. 8088, dated December 17, 1930.

(3)Eliminate; station abandoned.

[7]**Reissued** from Supplement No. 7, effective December 15, 1927.

[8]**Reissued** from Supplement No. 8, effective September 20, 1928.

[10]**Reissued** from Supplement No. 10, effective July 1, 1929.

[12]**Reissued** from Supplement No. 12, effective September 15, 1929.

[16A]**Reissued** from Supplement No. 16, effective February 1, 1931.

Finis

RULES.

The following Rules govern the handling of UNCOMPRESSED COTTON AND UNCOMPRESSED COTTON LINTERS OR REGINS under this Tariff.

To be compressed at
CLEVELAND, MISS.
And Forwarded via

The Yazoo and Mississippi Valley Railroad or via The Yazoo and Mississippi Valley Railroad, Vicksburg, Miss., and Mississippi-Warrior Service as provided in "Application of Tariff" on page 2.

®RULE 1—METHODS OF SETTLEMENT ON BASIS AUTHORIZED BY THIS TARIFF.

(a) At transit user's option the application of rates authorized herein will be effected by the use at the time of outbound shipments of the remainder of rate authorized herein after deducting the rate paid into Cleveland, Miss., or will be effected by claim.

(b) When application of rates authorized herein is to be effected at the time of outbound movement by the use of the remainder of the through rates, original inbound paid freight bills covering the movement to Cleveland, Miss., must be surrendered to the railroad agent at the time the compressed cotton, cotton linters or regins is tendered for shipment from Cleveland, Miss.

(c) If original paid freight bills covering inbound movement to Cleveland, Miss., are not surrendered to the railroad agent at the time the outbound shipment of compressed cotton, cotton linters or regins is tendered it shall be understood that settlement by claim is desired. Claims for refund to the basis authorized herein must be supported by original paid freight bills covering inbound movement of uncompressed cotton, cotton linters or regins from points of origin specified herein and copies of bills of lading covering outbound movement from Cleveland, Miss.

RULE 2.—RATES TO APPLY TO CLEVELAND, MISS.

When uncompressed cotton, cotton linters or regins from points of origin specified herein is received at Cleveland, Miss., the railroad agent will collect freight charges on basis of rates shown in current Tariff to Cleveland, Miss., deliver the shipment in the usual way and take receipt for same in the usual manner.

®RULE 3—SURRENDER OF PAID FREIGHT BILLS.

(a) When settlement is to be effected by claim as authorized in Rule 1, original paid freight bills covering inbound movement of uncompressed cotton, cotton linters or regins from points of origin specified herein must be attached to claims for refund to the basis authorized herein.

(b) Except as provided in paragraph (a) when compressed cotton, cotton linters or regins is tendered for shipment from Cleveland, Miss., original paid freight bills covering inbound movement of uncompressed cotton, cotton linters or regins, from points of origin specified herein must be surrendered to the railroad agent as evidence that such shipment is entitled, subject to the provisions of these rules, to the application of through rates authorized by Rule 5.

(c) Inbound paid freight bills must cover as many bales (see also Rule 14, page 4) as tendered for shipment from Cleveland, Miss., and must be representative of the outbound shipments, viz.:

When outbound shipments consist of	Inbound paid freight bills must be surrendered for
Compressed Cotton	Uncompressed Cotton.
Compressed Cotton Linters or Regins	Uncompressed Cotton Linters or Regins.

®RULE 4—CANCELLATION OF PAID FREIGHT BILLS.

(a) When settlement is to be effected by claim as authorized in Rule 1, original paid freight bills covering inbound movement of uncompressed cotton, cotton linters or regins from points of origin specified herein must be attached to the claims for refund as authorized herein and will be cancelled by the Auditor of Freight Receipts.

(b) Except as provided in paragraph (a) when bills of lading are issued to cover the compressed cotton, cotton linters or regins, the railroad agent must take up and cancel the original inbound paid freight bills and endorse on the back thereof the number and date of waybill or waybills covering the outbound movement. The canceled paid freight bills must be forwarded weekly to the Auditor of Freight Receipts, attached to tissue copies of waybills covering the outbound shipments. If the entire lot of inbound cotton, cotton linters or regins shown on paid freight bills surrendered is not forwarded at one time, agents should hold tissue copies until the entire consignment is shipped and then forward canceled paid freight bills and tissue copies as indicated in the foregoing.

RULE 5.—RATES APPLICABLE.

(a) Except where back or circuitous hauls involved (see Rule 7), when compressed cotton, cotton linters or regins is shipped from Cleveland, Miss, to destinations authorized by this tariff, the through rates, including cost of compressing, from point of origin shown on inbound paid freight bill surrendered, to destination, shown in tariffs enumerated on Page 2 in effect on date of bill of lading covering the movement into Cleveland, Miss., will be applied. Where back or circuitous hauls involved charges and provisions of Rule 7, to be observed. (See Rules 6, 10 and 11).

(b) If thru carload rates are provided in tariffs enumerated on page 2 the compressed cotton, cotton linters or regins may be shipped from Cleveland in carloads on basis of the thru carload rates from each point of origin shown on inbound paid freight bills surrendered, subject to the highest minimum carload weight applicable from any of said points of origin regardless of whether the movement into Cleveland was in carload or less carload quantities. (See paragraph (e).)

(c) If transit and non-transit cotton, cotton linters or regins is shipped from Cleveland, Miss., in mixed carloads to destinations covered by this Tariff, the transit portion will be charged for at the transit carload rate, and the non-transit portion will be charged for at the non-transit carload rate, subject to the highest minimum carload weight applicable from Cleveland or any point of origin shown on inbound paid freight bill surrendered. (See paragraph (e).)

(d) If the aggregate weight of cotton, cotton linters or regins in carloads from Cleveland is less than the minimum weight required by this rule, the deficit shall be charged for at the non-transit carload rate from Cleveland, Miss.

(e) Cotton and cotton linters or regins may be forwarded from Cleveland, Miss., in mixed carloads only where through rates from points of origin shown on inbound paid freight bills surrendered, to destination, are applicable on such shipments under tariffs specified under "Application of Tariff," on page 2.

RULE 6.—SHIPMENTS TO PACIFIC COAST POINTS (for export.)

On cotton, cotton linters or regins shipped from Cleveland, Miss., in carloads to Portland, Ore., (for export), San Francisco, Cal., (for export), Seattle, Wash. (for export), or Tacoma, Wash. (for export), the carload rates and minimum weight as published in Trans-continental Tariffs Nos. 1-W and 4-T, Agent R. H. Countiss' I. C. C. No. 1129, C. R. C. No. 465 and I. C. C. No. 1130, C. R. C. No. 466 (I. C. R. R. Co. Tariffs 4407-P and 4409-Q) respectively, supplements thereto or reissues thereof, will be applied from each point of origin as represented by the inbound paid freight bill surrendered, regardless of whether the cotton, cotton linters or regins moved into Cleveland, Miss., in carloads or less carloads. (See Rule 5 (e)). Where back or circuitous hauls involved charges and provisions of Rule 7 to be observed.

®Reduction.

RULES—Continued.

RULE 7—BACK OR CIRCUITOUS HAULS.

Back or circuitous hauls will be permitted and in addition to the through rates authorized by Rules 5 and 6 charges for the additional services will be assessed on the following basis:

FOR BACK OR CIRCUITOUS HAULS	ADD TO THROUGH RATES
15 miles and less	2½ cents per 100 pounds.
25 miles and over 15	3½ cents per 100 pounds.
35 miles and over 25	4½ cents per 100 pounds.
45 miles and over 35	5 cents per 100 pounds.
55 miles and over 45	6 cents per 100 pounds.
65 miles and over 55	6½ cents per 100 pounds.

The chart on Page 6, shows in miles the extent of back or circuitous hauls via Cleveland, Miss.

RULE 8.—TIME LIMIT ON PAID FREIGHT BILLS.

Paid freight bills dated not more than twelve months prior to date compressed cotton, cotton linters or regins is forwarded from Cleveland, Miss., will be accepted for shipment at rates provided in Rule 5.

RULE 9.—LOCAL CONSUMPTION.

Paid freight bills for cotton, cotton linters or regins delivered for local consumption will not be accepted for outbound shipment of cotton, cotton linters or regins under these rules. For each bale of cotton, cotton linters or regins received by rail for compressing and afterwards disposed of for local consumption or other local disposition, a paid freight bill covering equal weight of like commodity must at once be canceled and proper record made thereof.

®RULE 10—BILLS OF LADING FOR COMPRESSED COTTON, COTTON LINTERS OR REGINS.

When settlement is not to be effected by claim, bills of lading for the compressed cotton; cotton linters or regins must bear notation:

"Rates from Cleveland, Miss.....(here insert remainder of through rate) from.....(here insert point of origin shown on inbound paid freight bill surrendered"). If back or circuitous hauls are involved, the additional charges shown in Rule 7, should also be added.

®RULE 11—WAYBILLING INSTRUCTIONS ON COMPRESSED COTTON, COTTON LINTERS OR REGINS.

(a) When settlement is to be effected by claim as authorized in Rule 1, the compressed cotton, cotton linters or regins must be waybilled from Cleveland, Miss., at the local rates applying from Cleveland, to final destination.

(b) When settlement is not to be effected by claim, the compressed cotton, cotton linters or regins must be waybilled from Cleveland at the remainder of the through rate as authorized herein after deducting from such through rate the rate paid into Cleveland, as shown on inbound paid freight bill surrendered. The outbound waybill, must show the point of origin, the date of inbound shipment to Cleveland, and the rate paid to Cleveland. If back or circuitous hauls are involved, the additional charges shown in Rule 7, should also be added.

(c) Waybills for compressed cotton, cotton linters or regins waybilled in accordance with paragraph (b), this rule must bear notation:

"Rate from Cleveland, Miss.....(here insert remainder of through rate), on.....(here insert name of commodity), from.....(here insert point of origin shown on inbound paid freight bill surrendered.)

RULE 12.—ALLOWANCE FOR COMPRESSING.

(a) Maximum allowance to compresses for compressing cotton, cotton linters or regins, in standard rectangular bales, will be fifteen (15) cents per 100 pounds.

(b) The amount to cover cost of compressing (not in excess of 15 cents per 100 pounds) included in the through rate, from point of origin (shown on inbound paid freight bill surrendered) to destination, will be deducted from proportion applying from Cleveland, Miss., to destination, and paid only to the compress Company performing the service of compressing.

RULE 13.—TRANSFER OF PAID FREIGHT BILLS BETWEEN DEALERS OR SHIPPERS.

A transfer of paid freight bills between dealers or shippers will be permitted only where the ownership of cotton, cotton linters or regins is also transferred by a bona fide sale. A certificate to this effect shall be made in the following form on the face of the paid freight bill:

This is to certify that there has been a bona fide sale to the undersigned of.....bales of .....(here insert name of commodity.)

Signed.....

Date.....

RULE 14—EXCESS WEIGHT, DIFFERENCES IN WEIGHTS AND CREDIT SLIPS.

If the weight of the outbound shipment exceeds the weight represented by the inbound paid freight bills, the excess weight is not entitled to transit rate, but will be charged for at the lawfully published rate from Cleveland, Miss., proper, to final destination. (The carload rates to apply as authorized in Rule 5, page 3.)

If the weight represented by the inbound paid freight bills surrendered is in excess of the transit weight of the outbound shipment the shipper will be given a credit slip for such excess weight, which may be used for shipment within the life of the freight bill of which such excess is a part; provided, however, no credit slip will be given for that weight which is lost through the process of sampling, etc., and provided, further, that no such credit slip will be given for less than five hundred pounds on any one paid freight bill. (See also Rule 3, page 3.)

In applying this rule in connection with Rule 3, page 3, where the number of bales of cotton in the shipment from transit point does not correspond with the number of bales shown on the inbound paid freight bills surrendered, the weight of the transit and non-transit cotton will be ascertained and applied in the following manner:

Determine the average weight per bale by dividing the weight of the shipment from the transit point by the total number of bales in such outbound shipment and apply the average weight per bale so obtained to each of the transit and non-transit bales of cotton in such outbound shipment.

RULE 15.—COMPRESSING IN CASES OF EMERGENCY.

The object and purpose of these rules is to permit the movement of uncompressed cotton, cotton linters or regins, as provided herein, to Cleveland, Miss., for compressing and shipment to destinations shown in this Tariff. If, however, highwater, accident, breakdown, damage, destruction by fire, receipts beyond capacity, or other cause, renders compress unavailable for prompt service, or inaccessible to The Yazoo and Mississippi Valley Railroad Co. The Yazoo and Mississippi Valley Railroad Co. reserves the right to use any available or accessible compress without additional charge to the shipper.

®Reduction.

116

76g-7

RULES—Continued.

RULE 16.—RECORDS KEPT BY SHIPPERS AND INSPECTION BY CARRIER.

The Yazoo and Mississippi Valley R. R. Co. will, through its duly appointed agents, make such investigation of the records of the shippers accorded transit privileges as may be necessary, and all shippers accorded transit privileges as herein defined, shall keep record of receipts from all sources and of all dispositions of cotton, cotton linters or regins. Affidavit as to the accuracy of such records shall be furnished representatives of The Yazoo and Mississippi Valley Railroad Co. when required. In the event of failure or refusal on the part of shippers to maintain such records, or in all particulars to conform to these rules transit privileges will be refused.

RULE 17.—CLASSIFYING, MARKING, ETC., ON RAILROAD PROPERTY.

The Yazoo and Mississippi Valley Railroad Co. will not permit shippers or receivers to class, re-mark, etc., cotton, cotton linters or regins on its property at compress points, and agents will be required to personally see that this rule is enforced.

RULE 18.—WEIGHTS TO APPLY.

Where rates on cotton, cotton linters or regins apply in cents per one hundred pounds, shipments shall be waybilled at and charges assessed on basis of actual weight; except that where weight cannot be obtained, certificate of a public weigher or certified copy of invoice of actual gross weight will be accepted as evidence of actual weight.

In cases where the actual weight cannot be determined, shipments shall be waybilled at estimated weight of five hundred (500) pounds per bale, and agent shall make notation on waybill, "Estimated weight used. Agent at destination will determine actual weight and collect charges accordingly."

RULE 19.—BASIS TO APPLY TO POINTS BEYOND TRANSIT DESTINATIONS.

When shipments from points of origin are destined to points beyond the transit destinations, the rates and transit privileges authorized herein will be applied to such transit destinations and the rates lawfully applicable from such transit destinations to ultimate destinations, will be in addition.

RULE 20—INTERMEDIATE STATIONS, APPLICATION OF RATES, RULES OR REGULATIONS FROM.

From a point of origin not named herein, but located between two points on the same line from which rates, rules or regulations are authorized herein, apply from such intermediate point same rates, rules or regulations as from the station on either side taking the higher rate, rule or regulation.

RULE 21—RULES IN TARIFF CONTAINING RATES ALSO APPLY.

Except as otherwise specifically provided in this Tariff, the rules and regulations governing rates shown in Agent J. H. Glenn's I. C. C. Nos. A-473, A-388, A-365 and A-466 (I. C. R. R. Co. and The Y. and M. V. R. R. Co. Tariff Nos. 13432-D, 13430-C, 13434-C and 13436-E, respectively), Trans-Continental Freight Bureau Joint Tariff No. 1-W, Agent R. H. Countiss' I. C. C. No. 1129, C. R. C. No. 465 (I. C. R. R. Co. Tariff No. 4407-P), Trans-Continental Freight Bureau Joint Tariff No. 4-T, Agent R. H. Countiss' I. C. C. No. 1130, C. R. C. No. 466 (I. C. R. R. Co. Tariff No. 4409-Q), Trans-Continental Freight Bureau West-Bound Export Tariff No. 29-N, Agent R. H. Countiss' I. C. C. No. 1137, C. R. C. No. 473 (I. C. R. R. Co. Tariff No. Foreign 376-X), and Agent W. M. Hough's I. C. C. No. A-66 (I. C. R. R. and The Y. and M. V. R. R. Tariff No. 13716-C), supplements thereto or reissues thereof, also govern shipments handled under this Tariff.

TABLE SHOWING IN MILES THE BACK OR CIRCUITOUS HAULS VIA CLEVELAND, MISS., FROM POINTS OF ORIGIN TO POINTS OF DESTINATION COVERED BY THIS TARIFF TO BE USED IN DETERMINING THE AMOUNT TO BE ADDED TO THROUGH RATES UNDER RULE 7.

GROUP 1—INCLUDES THE FOLLOWING:

(a) All points and ports in the United States and Canada north of an east and west line drawn through Cleveland, Miss., except as provided in Group 2.

(b) Southern points east of the Alabama-Mississippi State Line except Mobile, Ala., and Pensacola, Fla.

(c) Pacific Coast Points except points in California when routed through New Orleans, Baton Rouge, La., Natchez or Vicksburg, Miss.

GROUP 2—INCLUDES THE FOLLOWING:

(a) All points and ports south of an east and west line drawn through Cleveland, Miss., not included in Group 1.

(b) Albany, N. Y., Boston, Mass. New York, N. Y., Philadelphia, Pa., Utica, N. Y. and points taking same rates or arbitraries higher, when routed via New Orleans, La., in connection with Southern Pacific-Atlantic Steamship Lines "Morgan Line".

(c) Points in California, when routed via New Orleans, Baton Rouge, La., Natchez or Vicksburg, Miss.

For list of points of destination, see tariffs enumerated on Page 2.

Index No.	FROM	TO	GROUPS 1 MILES	GROUPS 2 MILES
	MEMPHIS DIVISION.			
	Clarksdale District.			
2	Bobo	Miss	28	
4	Alligator	"	24	
6	Gum Pond	"	23	
8	Duncan	"	21	
10	Hushpuckana	"	18	
12	Shelby	"	14	
14	Wyandotte	"	11	
16	Mound Bayou	"	8	
18	Merigold	"	6	
20	Renova	"	2	
	VICKSBURG DIVISION			
	Cleveland District.			
22	Boyle	Miss		3
24	O'Reillys	"		6
26	Appeal	"		7
28	Shaw	"		11
30	Choctaw	"		15
32	Helm	"		19
34	Head	"		21
36	Elizabeth	"		25
38	Isenberg	"		29
40	Aldridge	"		30
42	Burdette	"		30
44	Erots	"		31
46	Wilmot	"		34
48	Arcola	"		36
50	McCutcheon	"		39
52	Estill	"		40
54	Warsaw	"		42
56	Hollandale	"		43
58	Overby	"		45
60	Percy	"		48
62	Panther Burn	"		51
64	Nitta Yuma	"		54
66	Cameta	"		55
68	Anguilla	"		58
70	Mont Helena	"		61
72	Riverside Junction	"		62
74	Rolling Fork	"		63
	VICKSBURG DIVISION —Continued.			
	Helm District			
76	Napanee	Miss		16
78	Busey	"		16
80	Lees	"		16
82	Turners	"		16
84	Littons	"		16
86	Jacobs	"		16
	Kimball Lake District			
88	Niles	Miss		3
90	Malvina	"		3
92	Symonds	"		3
94	Clifford	"		3
96	Pace	"		3
98	Victor	"		3
100	Kimball Lake	"		3
102	Laughlin	"		3
104	Skene	"		3
106	Halstead	"		3
108	White City	"		3
110	Barrow	"		3
112	Dockery	"		3
	Yerger District.			
114	Holly Knowe	Miss		27
116	Brown's Spur	"		27
118	Tribbett	"		27
120	Bourbon	"		27
122	McGrath	"		27
124	Trail Lake	"		27
126	Yerger	"		27
	Riverside District.			
128	Gill	Miss		3
130	Beulah	"		3
132	Christmas	"		3
134	Byng	"		3
136	Lobdell	"		3
138	Dahomey	"		3
140	Benoit	"		3

Where blank spaces occur in above table, there is no back or circuitous service and the through rates from points of origin to destinations apply.

Where mileages are shown in above table, add to through rates from point of origin to destinations the amounts shown opposite that mileage in Rule 7.

(Authority No. G-7951.)

118

76g-9

[fols. 76g-10 & 11] STATE OF MISSISSIPPI,
County of Hinds:

I, Tom Q. Ellis, Clerk of the Supreme Court of the State of Mississippi do hereby certify that the above and foregoing are the original exhibits A, C, D, E, F, G, H, J, to the Agreed Statement of Facts in the Case of Federal Compress & Warehouse Company vs. E. R. McLean, Sheriff, Number 30 543.

Witness my signature and official seal of office this the 19th day of May, 1933.

Tom Q. Ellis, Clerk of the Supreme Court of the State of Mississippi. (Seal.)

[fol. 77] EXHIBIT "K"

Cotton Production

Year	Acres harvested in Mississippi	Yield in Bales Mississippi	Yield in Bales in United States
1901	3,194,000	1,255,000	10,102,102
1902	3,184,000	1,444,000	9,582,520
1903	3,328,000	1,433,000	10,588,250
1904	3,632,000	1,799,000	9,819,969
1905	3,051,000	1,199,000	13,451,337
1906	3,408,000	1,531,000	10,495,105
1907	3,081,000	1,468,000	12,983,201
1908	3,395,000	1,656,000	11,057,822
1909	3,291,000	1,083,000	13,086,005
1910	3,317,000	1,263,000	10,072,731
1911	3,340,000	1,204,000	11,568,334
1912	2,889,000	1,046,000	15,553,073
1913	3,067,000	1,311,000	13,488,539
1914	3,054,000	1,246,000	13,982,811
1915	2,735,000	954,000	15,905,840
1916	3,110,000	812,000	11,068,173
1917	2,788,000	906,000	11,363,915
1918	3,138,000	1,226,000	11,248,242
1919	2,848,000	961,000	11,906,480
1920	2,950,000	895,000	11,325,532
1921	2,628,000	813,000	13,270,970
1922	3,014,000	989,000	7,977,778

Year	Acres harvested in Mississippi	Yield in Bales Mississippi	Yield in Bales in United States
1923	3,170,000	604,000	9,729,306
1924	2,981,000	1,099,000	10,170,694
1925	3,466,000	1,991,000	13,639,399
1926	3,752,000	1,888,000	16,122,516
1927	3,340,000	1,355,000	17,755,070
1928	4,029,000	1,475,000	12,783,112
1929	4,071,000	1,915,000	14,296,549
1930	4,442,000	1,464,000	14,548,000
1931	3,985,000	*1,740,000	*14,350,000
1932		*1,100,000	*11,947,000

*Estimated.

[fol. 78] EXHIBIT "L"

Cotton Consumption in Mississippi

	Spindles	(Exclusive of Linters) Bales of Cotton
1920	174,714	36,425
1921	176,778	31,208
1922	172,612	40,463
1923	178,508	46,117
1924	182,508	34,751
1925	185,192	32,201
1926	177,836	33,402
1927	175,644	36,450
1928	176,604	41,627
1929	177,346	41,331
1930	207,088 (131,284 active)	36,204

[fol. 79] IN CIRCUIT COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, STATE OF MISSISSIPPI

No. 4310

FEDERAL COMPRESS & WAREHOUSE COMPANY, Plaintiff,

vs.

E. R. McLEAN, Sheriff & Tax Collector, etc., Defendant

FINAL JUDGMENT—Filed Nov. 21, 1932

This cause coming on this date for final hearing on declaration, personal service of legal process, plea of gen-

eral issue of the defendant, all parties being persent in person and represented by counsel, and issue having been joined; came a jury of twelve good and lawful jurors of the Second Judicial District of Bolivar County, Mississippi, consisting of J. T. Robbins and eleven others, who being first duly empanelled and sworn the issue thus joined to well and truly try, and having heard oral and documentary evidence, having received the instructions of the Court, and having heard argument of counsel, retired to consider their verdict and presently returned into open court the following verdict, to-wit:

"We, the Jury find for the Defendant."

Whereupon, it is hereby ordered and adjudged that the Plaintiff, Federal Compress & Warehouse Company, take nothing by this its suit against E. R. McLean, Sheriff & Tax Collector of Bolivar County, State of Mississippi, Defendant, but that said Defendant go hence without day, and said suit be and the same is hereby finally dismissed and the said Plaintiff is taxed with all costs herein assessed and to be assessed; and let execution issue.

It is further ordered and adjudged upon prayer of the Plaintiff for and Appeal to the Supreme Court of the State [fol. 80] of Mississippi, that said appeal be and the same is hereby allowed upon the said Plaintiff filing within the time and manner required by law a good and sufficient appeal bond to be appreoved by the clerk of this court, in the sum of Five Hundred Dollars, conditioned as provided by law; and that in making up the record for said appeal the said clerk is hereby ordered and directed to make use of the original exhibits herein without the necessity of copying same, as a part of said record for appeal.

Ordered and adjudged this 21st day of November, 1932.

[File endorsement omitted.]

[fol. 81] Bond on appeal for $500.00 approved, omitted in printing.

[fol. 82] IN SUPREME COURT OF MISSISSIPPI

No. 30543

FEDERAL COMPRESS & WAREHOUSE COMPANY

vs.

E. R. McLEAN, Sheriff

Division A, Smith, C. J.

OPINION—Filed April 3, 1933

The appellant is a Delaware corporation, and owns and operates a cotton warehouse and a cotton compress at Cleveland, Miss. Section 57, Chap. 88, Laws of 1930, imposes a privilege tax "upon each person operating a cotton compress," graduated according to the number of bales compressed per annum. Section 63 of the same statute imposes a privilege tax "upon each person operating a warehouse for the storage of cotton, whether in conjunction with a compress or not", graduated according to the storage capacity of the warehouse. These privilege taxes must be paid before the warehouse and compress can be operated, Sections 3 and 242 of the statute. The appellant paid the appellee tax collector, under protest, the privilege taxes required of it under these statutes, and has brought this suit to recover the same.

The case was tried on an agreed statement of facts. The court directed the jury to return a verdict for the appellee, and there was a judgment accordingly.

The appellant's complaints are: First, the statute, as applied to it, violates the United States Warehouse Act; [fol. 83] and, second, regulates or imposes a burden on interstate commerce beyond the state's power to do under the Commerce Clause of the Federal Constitution.

The following facts appear from the agreed statement of facts. Cotton, after being picked, is ginned and packed into bales of approximately five hundred pounds each. The general and uniform custom under which cotton is marketed is to transport it from its place of production by rail or truck to a warehouse or compress, the owner receiving from the warehouse a negotiable receipt therefor. The cotton is then sold to buyers, who purchase it for the purpose of selling and shipping it in interstate commerce. All of the cotton, except such a few bales thereof

as to be negligible, that has passed through the appellant's warehouse and compress, has been shipped therefrom to other states or countries. The appellant has a contract with the Yazoo & Mississippi Valley Railroad Company, near the right of way of which its warehouse and compress are situated, one of the provisions of which is as follows:

"The intent and purpose of this agreement, among other things, is to confirm the Compress Company as the limited agent of the Railroad Company for the purposes of receiving cotton from the Railroad Company, delivering cotton to the Railroad Company, loading and unloading cotton from and into the cars of said Railroad Company, making proper delivery of cotton in the custody of said Compress Company so far as concerns the interest of the Railroad Company, and as principal to furnish the premises for the use of the Railroad Company as a cotton depot under and subject to all of the terms and conditions of this agreement and the lawfully published tariffs and regulations of the Railroad Company from time to time in effect with respect to the transportation and handling of cotton."

[fol. 84] When the purchasers of these warehouse receipts have sold, and desire to ship, the cotton to other states or countries, they surrender the receipts to the appellant which then compresses the cotton, thereby reducing the size of the bale, and loads it into cars of the railroad company, which then issues a bill of lading therefor. The rate charged by the railroad company for transporting the cotton, that had been shipped to the compress from an interior point on a local bill of lading, is the through rate from the point from which it was shipped to the appellant to its point of destination under the new bill of lading, credit thereon being given the shipper on the surrender of the receipt for the transportation charged under the prior local bill of lading. The appellant's charges for compressing the cotton are paid by the railroad company which, together with the railroad's transportation charges, are with the approval of the Interstate Commerce Commission.

The appellant's complaint that the exaction of these privilege taxes, as applied to it, violates the United States Warehouse Act, may be summarily disposed of by saying that it is wholly without merit.

The appellee concedes, and for the purpose of the argument we will assume, that these taxes as applied to the appellant violates the interstate commerce clause of the Federal Constitution, if its warehouse and compress are essential means and instrumentalities of interstate commerce.

The cotton, moving through the appellant's warehouse and compress, entered into, and became a part of, interstate commerce when, but not until, it commenced its journey from this state to another state or country; in other words, when the cotton was delivered to the railroad company for transportation into another state or country. This did not [fol. 85] occur until it was delivered to the railroad, after being compressed, for transportation. Coe v. Errol, 116 U. S. 519, 29 L. Ed. 75; Diamond Match Co. v. Village of Ontonagon, 188 U. S. 82, 47 L. Ed. 394. The assembling of the cotton in the warehouse and its compression are acts preliminary, convenient for, but not absolutely essential, to its transportation to other states or countries. Authorities supra; and Munn v. People of Illinois, 94 U. S. 113, 24 L. Ed. 77; Cargile Company v. Minnesota, 180 U. S. 452, 45 L. Ed. 619; Merchants Exchange v. Missouri, 248 U. S. 365, 63 Ed. 300; 12 C. J. 38, pp. 94, 103. The appellant's warehouse and compress, therefore, are not instrumentalities of interstate commerce; consequently the privilege taxes collected thereon imposed no unconstitutional burden on that commerce.

Affirmed.

[File endorsement omitted.]

[fol. 86] IN SUPREME COURT OF MISSISSIPPI

30543

FEDERAL COMPRESS CO.

vs.

E. R. McLEAN, Sheriff

JUDGMENT—April 3, 1933

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Bolivar County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the

judgment of said Circuit Court rendered in this cause on the 21st day of November 1932, be and the same is hereby affirmed. It is further ordered and adjudged that the appellee do have and recover of and from the appellant and New Amsterdam Casualty Company of N. Y., all of the costs of this appeal to be taxed, etc.

[fol. 87] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 88] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed June 16, 1933

Pursuant to Rule 13, Subdivision (9), the appellant in this cause would rely upon the following points:

1. That Section 57, page 162, Chapter 88, Laws of Mississippi, 1930, as to compresses, providing:

"Cotton Compresses.—Upon each person operating a cotton compress, as follows:

"Where the number of bales of cotton compressed per annum is 40,000 bales, or less, and more than 30,000 bales, $400.00,"

is an undue burden upon interstate commerce, and void by reason thereof, compression of cotton being a necessary element in interstate and foreign commerce.

2. That said compress of appellant, being licensed as a Federal warehouse under the National Warehouse Act, Chapter 10, Title 7, U. S. C. A., Chap. 313, 39 Statutes at Large 486, is the taxation of a Federal instrumentality and therefore void.

3. That the tax imposed by Mississippi under Section 63, Chapter 88, Laws of Mississippi, 1930, as to cotton warehouses, providing:

"Cotton Warehouses.—Upon each person operating a warehouse for the storage of cotton, whether in conjunction with a compress or not, as follows: * * *

"Where the storage capacity of same is 35,000 bales or less, and more than 20,000, $75.00,"

is an undue interference with interstate commerce, in that [fol. 89] said warehousing as hereunder done constitutes interstate commerce.

4. That said tax upon said cotton warehouse is an undue burden upon a Federal instrumentality existing as a warehouse licensed by the Federal Government, pursuant to the National Warehouse Act, Chapter 10, Title 7, U. S. C. A.; Chap. 313, 39 Statutes 486, Aug. 11, 1916, and that in order to adequately present the points relied upon, you will print the following, as listed in the præcipe:

(1) The declaration, with exhibits. However, when said exhibits are but duplicates, one or the other differing only as to detail of that described, print only one as a type, omitting the remainder.

(2) The general issue plea.

(3) The agreement of the parties.

(4) Order as to nonsuit.

(5) Agreed statement of facts, with exhibits, printing only each exhibit once when said exhibits, as is here the case, are numerous.

(6) Final judgment of the Circuit Court.

(7) Appeal bond.

(8) Judgment and opinion of the Supreme Court of Mississippi.

(9) Appellate proceedings.

Marcellus Green, Sam W. Green, Forest B. Jackson, Counsel for Appellant.

Service of the foregoing is hereby duly admitted, and counsel for the appellee agrees that the record may be printed as above requested, without waiting for any counter designation.

Dated this 14th day of June, 1933.

W. W. Pierce, Asst. Attorney General of the State of Mississippi, Counsel for Appellee. J. A. Louderdale, Assistant Attorney General.

[fol. 90] [File endorsement omitted.]

Endorsed on cover: File No. 37,769. Mississippi Supreme Court. Term No. 166. Federal Compress & Warehouse Company and New Amsterdam Casualty Company of New York, appellants, vs. E. R. McLean, sheriff and tax collector, et al. Filed June 12, 1933. File No. 166, O. T., 1933.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions believed to sustain the jurisdiction	1
State statutes involved	3
Date of the judgment sought to be reviewed	4
Statement of the case	4

Table of Cases Cited.

A. G. S. R. Co. v. M'Fadden & Bros., 232 Fed. 1003	5
Anglo Chilean Nitrate Sales Corporation v. State of Alabama, No. 377, October Term. 1932 (decided February 6, 1933)	3
Augusta Cotton Exch. v. G. & F. Ry., 146 I. C. C. 245	7
Carson Petroleum Co. v. Vial, 279 U. S. 104, 73 L. Ed. 631	6
Cotton from Tennessee River Landings, 120 I. C. C. 51	7
Crescent Cotton Oil Co. v. Mississippi, 257 U. S. 136, 66 L. Ed. 166, 170	3, 7
Dahnke v. Bondurant, 257 U. S. 290, 66 L. Ed. 243	5
Federal Trade Commission v. Association, 273 U. S. 64, 71 L. Ed. 539	7
Foster-Fountain Packing Co. v. Haydel, 278 U. S. 10, 73 L. Ed. 153	5
Furst v. Brewster, 282 U. S. 498. 75 L. Ed. 481	7
Hohenberg v. L. & N. R. Co., 46 Fed. (2d) 952, 955	6
Interstate Commerce Commission v. C. of Ga. Ry., 45 I. C. C. 516	6
Lemke v. Farmers' Grain Co., 258 U. S. 53, 66 L. Ed. 461	5
Liggett v. Lee, No. 301, October Term. 1932 (decided March 13, 1933)	3
McFadden & Bros. Agency v. A. & R. R. R., 126 I. C. C. 519	7
Matthews v. Rodgers, 284 U. S. 521, 76 L. Ed. 271	2, 4
Montgomery Cotton Exch. v. S. A. L. Ry., 109 I. C. C. 579	6
Nashville, etc., R. Co. v. Wallace, No. 176, October Term, 1932 (decided February 6, 1933)	3
New Orleans Cotton Exch. v. L. & N. R. R., 46 I. C. C. 712	7
Omaha Elevator Co. v. Union Pac. R. Co., 249 Fed. 832	5
Pennsylvania R. Co. v. Commission, 250 U. S. 566, 63 L. Ed. 1143	7

	Page
People v. Perry, 291 Pac. 237	5
Savannah Traffic Bureau v. A. & R. R. R. Co., 96 I. C. C. 749	6
Southern Pac. Co. v. Calexico, 288 Fed. 942	5
Stafford v. Wallace, 258 U. S. 495, 66 L. Ed. 735	5
State v. S. A. & A. P. Ry. Co., 73 S. W. 575	7
Swift v. United States, 196 U. S. 397, 49 L. Ed. 524	5
Thomas Cotton Company v. I. C. R. R. Co., 63 I. C. C. 89-92	6
United States v. Erie R. Co., 280 U. S. 101, 74 L. Ed. 206	6
United States v. Gosho Co., 23 Fed. (2d) 675	5, 6

STATUTES CITED.

Code of Laws of Mississippi of 1930, Section 1314	8
Constitution of the United States, Article I, Section 8, Subdivision 3	2
Interstate Commerce Act, Section 1 (49 U. S. C. A. 1)	5
Judicial Code, Section 237, as amended (28 U. S C. A. 344)	3
Laws of Mississippi of 1930, Chapter 88, Section 57, p. 162	3
Chapter 88, Section 63	3
Laws of Mississippi of 1932, Section 238, p. 166	7
United States Warehouse Act, Chapter 10, Title 7, U. S. C. A., Section 313, 39 Statutes 486, August 11, 1916	2, 4

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 166

FEDERAL COMPRESS & WAREHOUSE COMPANY AND NEW AMSTERDAM CASUALTY COMPANY OF NEW YORK, APPELLANTS,

vs.

E. R. McLEAN, SHERIFF AND TAX COLLECTOR, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

STATEMENT AS TO JURISDICTION.

A.

Statutory Provisions Believed to Sustain the Jurisdiction.

Appellants: Federal Compress & Warehouse Company, a Delaware Corporation, herein called "Company", and New Amsterdam Casualty Company of

New York, a New York Corporation, surety on its appeal bond; Appellee: E. R. McLean, Tax Collector.

Appellee exacted payment of appellant of a privilege tax imposed by Mississippi upon a cotton compress and a cotton warehouse operated by appellant at Cleveland. The tax being paid under protest, recovery was sought pursuant to *Matthews* v. *Rodgers*, 284 U. S. 521, 76 L. Ed. 271. The tax being averred to be (*a*) a direct burden upon interstate commerce, contravening Article 1, Section 8, subdivision 3 of the Federal Constitution; (*b*) taxation of a Federal instrumentality in this that the warehouse and compress was a Federal Bonded Warehouse operated under United States Warehouse Act, Chapter 10, Title 7, U. S. C. A., Section 313, 39 Statutes 486, August 11, 1916.

Appellee exacted from appellant as a condition precedent of appellant's right at Cleveland to conduct its business (*a*) of compress, and (*b*) of warehouse, said privilege tax, for the recovery of which this action was brought, whereupon appeal being taken to the highest court in Mississippi, the Supreme Court, the appellant drew in question the validity of said statutes hereinafter quoted, to wit, said privilege statutes, on the ground that they and each of them were repugnant to the Constitution of the United States, and the decision of the Supreme Court of Mississippi, being the highest court of Mississippi where this question might be determined, was in favor of the validity of said statutes and each of them and said court denied the Federal right claimed.

This appeal is under Section 237, Judicial Code, as amended, Title 28, Section 344, U. S. C. A., and decisions sustaining the jurisdiction of this Court on appeal to determine the invalidity of a State statute averred to contravene the Federal Constitution when the highest court of the State sustains the statute and denies the Federal right are *Nashville, etc., R. Co.* v. *Wallace,* U. S. Advance Sheets, Lawyers Co-op. Pub. Edition, 445; *Liggett* v. *Lee,* U. S. Advance Sheets, 553; *Anglo Chilean Nitrate Sales Corporation* v. *State of Alabama,* U. S. Advance Sheets, 451; *Crescent Cotton Oil Co.* v. *Mississippi,* 257 U. S. 136, 66 L. Ed. 166.

B.

The Statute of the State the Validity of Which is Involved.

(1) Section 57, page 162, Chapter 88, Laws of Mississippi, 1930, as to compresses:

> "COTTON COMPRESSES.—Upon each person operating a cotton compress, as follows:
>
> "Where the number of bales of cotton compressed per annum is 40,000 bales, or less, and more than 30,000 bales, $400.00,"

and (2) Section 63, Chapter 88, Laws of Mississippi, 1930, as to cotton warehouses:

> "COTTON WAREHOUSES.—Upon each person operating a warehouse for the storage of cotton, whether in conjunction with a compress or not, as follows: * * *
>
> "Where the storage capacity of same is 35,000 bales or less, and more than 20,000, $75.00,"

both alleged to contravene the Commerce Clause and the latter, in addition, to be an undue burden upon a Federal Instrumentality, existing as a National warehouse under Chapter 10, Title 7, U. S. C. A., Section 313, 39 Statutes 486, August 11, 1916.

C.

The Date of the Judgment, April 3, 1933.

D.

Statement of Case.

Federal Compress & Warehouse Company, called "Company", operated a cotton compress and Federal Bonded Warehouse at Cleveland, Mississippi, handling cotton alone. The facts are agreed and appearing in brief narrative form need not be here again repeated.

The Supreme Court of Mississippi held (1) no taxation of a Federal instrumentality; (2) that cotton moving through a Federal bonded warehouse and through the compress was not in interstate commerce, substantially because, while "convenient for", it was not "absolutely essential to its transportation to other states or countries * * *. The appellant's warehouse and compress, therefore, are not instrumentalities of interstate commerce."

Thereasto, appellant's contentions are that such storage and movement is interstate commerce because:

(1) Expressly so held by the three judge court, whose decision was reversed in *Matthews* v. *Rodgers*, 284 U. S. 521, 76 L. Ed. 271;

(2) *Interstate Commerce Act,* Section 1, 49 U. S. C. A., page 11, in defining transportation, thereunder includes:

> "All services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration * * * storage, and handling of property transported."

Southern Pac. Co. v. *Calexico,* 288 Fed. 642; *Omaha Elevator Co.* v. *Union Pac. R. Co.,* 249 Fed. 832; *A. G. S. R. Co.* v. *M'Fadden & Bros.,* 232 F. 1003; *United States* v. *Gosho Co.,* 23 F. (2d) 675;

(3) Movement of cotton under agreed state of facts a stream in interstate commerce under *Swift* v. *United States,* 196 U. S. 397, 49 L. Ed. 524; *Stafford* v. *Wallace,* 258 U. S. 495, 66 L. Ed. 735; *Lemke* v. *Farmer's Grain Co.,* 258 U. S. 53, 66 L. Ed. 461; *Dahnke* v. *Bondurant,* 257 U. S. 290, 66 L. Ed. 243. Compare *People* v. *Perry,* 291 Pac. 237;

(4) There is no point for cotton delivery other than appellant's warehouse and quoad receipt and ultimate shipment, it receives its compensation from the carrier whose agent thereasto it is;

(5) The compression charge is paid by the carrier out of the through rate and is compensation to appellant for furnishing space conservation in its equipment requisite to conduct interstate and foreign movement of cotton as at present carried on.

Foster-Fountain Packing Co. v. *Haydel,* 278 U. S. 10, 73 L. Ed. 153;

(6) 75 per cent of the cotton passing through appellant's plant has its origin at points wherefrom it floats into the compress on a local rate and thereupon after compression takes the through rate from the point of origin to the point of final destination.

Carson Petroleum Co. v. *Vial*, 279 U. S. 104, 73 L. Ed. 631; *United States* v. *Erie R. Co.*, 280 U. S. 101, 74 L. Ed. 206; *United States* v. *Gosho Co.*, 23 Fed. (2d) 675. Compare *Hohenberg* v. *L. & N. R. Co.*, 46 Fed. (2d) 952, at 955, where it was said:

> "The cotton without dispute was originally intended for export, with transit privileges at Montgomery, and though it moved under a local bill of lading from Greenville and other points into Montgomery where it was concentrated, compressed and reshipped by rail to the port of export, it was interstate commerce from the beginning and properly subject to the combination of interstate rates from the point of origin to concentration point, and thence to destination." (Citing cases.)

(7) Concentration and compression have been regulated by the Interstate Commerce Commission as being interstate commerce.

I. C. C. Docket No. 14,940; *Thomas Cotton Company* v. *I. C. R. R. Co.*, 63 I. C. C. 89-92; *Commission* v. *C. of Ga. Ry.*, 45 I. C. C. 516, 519; *Montgomery Cotton Exch.* v. *S. A. L. Ry.*, 109 I. C. C. 579, 582, 586.

As said in *Savannah Traffic Bureau* v. *A. & R. R. R. Co.*, 96 I. C. C. 749:

> "The real purposes of compression of cotton in transit at the expense of the carrier are con-

servation of equipment and economy of transportation."

Under so-called carrier's privilege rates compression is not a transportation service for the shipper, and no obligation rests upon the carrier to perform the service or to pay therefor, except as its compression aids interstate commerce. *New Orleans Cotton Exch.* v. *L. & N. R. R.*, 46 I. C. C. 712; *Cotton from Tennessee River Landings*, 120 I. C. C. 51; *McFadden & Bros. Agency* v. *A. & R. R. R.*, 126 I. C. C. 519; *Augusta Cotton Exch.* v. *G. & F. Ry.*, 146 I. C. C. 245. Compare *State* v. *S. A. & A. P. Ry. Co.*, 73 S. W. 575. *Furst* v. *Brewster*, 282 U. S. 498, 75 L. Ed. 481; *Federal Trade Commission* v. *Association*, 273 U. S. 64, 71 L. Ed. 539; *Crescent Cotton Oil Co.* v. *Mississippi*, 257 U. S. 136, 66 L. Ed. 170; *Pennsylvania R. Co.* v. *Commission*, 250 U. S. 566, 63 L. Ed. 1143.

Under these authorities, appellant's contention is that concentration for storage and compression in the warehouse and at the compress of this appellant constituted and is interstate commerce, and that the State may not exact as a condition a privilege tax for engaging therein and failing to pay such State exaction make the doing of interstate commerce a crime.

Compare Section 238, Laws of Mississippi, 1932, page 166, continuously in effect for many years last past, which provides:

> "Damages and Penalty for Failure to Procure License.—All persons liable for privilege taxes who shall fail to procure the license therefor before beginning the business for which a privilege tax is required by this act, or who shall fail to renew, during the month in which it is

due, the license on a business for which he has theretofore procured a privilege license, shall in each or either instance be liable for double the amount of the tax required for such business, and it is hereby made the duty of the collector, whose duty it is to collect the tax on such business, to collect the said tax and penalty, issue a separate license for the tax, and for the penalty, and to endorse across the face of the license issued as a penalty the words: 'Collected as Damages'; and he shall account for all such penalties, less commissions, as he is required to account for other privilege taxes. In addition to the hereinabove described penalties the delinquent taxpayer shall be guilty of a misdemeanor, and subject to the penalties therefor."

Compare Section 1314, Code of 1930, continuously in effect for many years last past:

"Penalty Where None Fixed Elsewhere by Statute.—Offenses for such a penalty is not provided elsewhere by statute, and offenses indictable at common law, and for which a statutory penalty is not elsewhere prescribed, shall be punished by fine of not more than five hundred dollars and imprisonment in the county jail not more than six months, or either."

Respectfully,

MARCELLUS GREEN,
GARNER W. GREEN,
FORREST B. JACKSON,
Attorneys for Appellants.

Filed 5/8/33.

TOM O. ELLIS, *Clerk.*

(3509)

INDEX.

Subject Index.

Brief for appellants:	Page
Questions involved and specifications of error	2
Specification No. 1	2
Specification No. 2	4
Statement of case	5
Argument	11
Point I. Section 57, Chapter 88, Laws of Mississippi, 1930, page 162, unconstitutional as a burden upon interstate commerce	11
Point II. Section 63, Chapter 88, Laws 1930, page 163, unconstitutional, being (a) undue burden as to cotton in interstate commerce, and (b) a direct tax upon a Federal instrumentality	24
Appendix A	41
Appendix B	43

Table of Cases Cited.

A. G. S. R. Co. v. M'Fadden, 232 Fed. 1000 ..... 4, 22, 23
Anglo Chilean Nitrate Sales Co. v. Alabama, U. S. Advance Sheets, 77 L. ed. 459 ..... 2, 12
Alabama G. S. R. Co. v. M'Fadden & Bros., 232 F. 1003 19
Atchison, T. & S. F. v. Harold, 241 U. S. 371, 60 L. ed. 1050 37
Augusta Cotton Exch. v. G. & F. Ry., 146 I. C. C. 245 17
Ballard v. Miss. Cotton Oil Co., 81 Miss. 507 4
Binderup v. Pathe Exch., 263 U. S. 291, 309, 68 L. ed. 308, 316, 44 Sup. Ct. Rep. 96 37
Board of Trade v. Olsen, 262 U. S. 1, 67 L. ed. 837 ..... 3, 20, 22, 25
Board of Trustees of University of Illinois v. United States, U. S. Advance Sheets, 77 L. ed. 651 ..... 2, 12
Matthews v. Rogers, 284 U. S. 521 2
Bowman v. Continental Oil Co., 256 U. S. 646, 65 L. ed. 1144 ..... 4, 35
Brewster v. Gage, 280 U. S. 337, 74 L. ed. 463 ..... 3, 21
Budd v. New York, 143 U. S. 517, 36 L. ed. 247 15
B. & O. S. W. R. Co. v. Settle, 260 U. S. 166, 67 L. ed. 189 13
Cargill Company v. Minnesota, 180 U. S. 452, 45 L. ed. 619 14
Carson Petroleum Co. v. Vial, 279 U. S. 104, 73 L. ed. 631 .. 3, 14, 20, 22, 25
Chassaniol v. City of Greenwood, 148 Southern (Mississippi), page 781 15
Chicago Portrait Co. v. Bellingham, 270 Fed. 584 28
Cook v. United States, 77 L. ed. 404 ..... 3, 21
Commission v. Diffenbaugh, 222 U. S. 42, 56 L. ed. 83 ..... 3, 16
Commission v. C. of G. Ry., 45 I. C. C. 516, 519 16

Page

Cotton from Tennessee River Landings, 120 I. C. C. 51..... 16
Crescent Cotton Oil Co. v. Mississippi, 257 U. S. 136, 66 L. ed. 170. 3, 24, 35
Dahnke Walker Milling Co. v. Bondurant, 257 U. S. 282, 290, 291, 66 L. ed. 239..... 3, 33
Diamond Match Co. v. Village of Ontonagon, 188 U. S. 82, 47 L. ed. 394 41
Di Santo v. Pennsylvania, 273 U. S. 37, 71 L. ed. 527..... 40
Elwood Grain Co. v. Railway Co., 202 Fed. 845, 121 C. C. A. 153.... 19
Federal Trade Commission v. Pacific States P. T. Asso., 273 U. S. 64, 71 L. ed. 539..... 3, 13, 30
Flanagan v. Federal Coal Co., 267 U. S. 222, 69 L. ed. 583..... 37
Fuerst v. Brewster, 282 U. S. 494, 75 L. ed. 481..... 3, 13, 29
Gillespie v. Oklahoma, 257 U. S. 501, 66 L. ed. 338..... 5
Greater New York Live Poultry, etc. v. United States, 47 Fed. (2d) 136..... 13, 33
Gregg Dyeing Co. v. Query, 286 U. S. 476, 76 L. Ed. 1236..... 17
Harrington v. Missouri Pacific R. Co., 254 Pac. (Kan.) 380.... 14, 20, 23
Henrietta Mills v. Rutherford County, 281 U. S. 121, 74 L. ed. 737.. 38
Hohenberg v. L. & N. R. Co., 46 Fed. (2d) 952, 955..... 4, 13, 20, 22, 23
Hump Hairpin Mfg. Co. v. Emerson, 258 U. S. 294, 66 L. ed. 625.... 24, 34
Independent Gin, etc. v. Dunwoody, 30 F. (2d) 307, 40 Fed. (2) 1.. 37
In re Cotton to Gulf Ports, 123 I. C. C. 685, 702..... 16
Jaybird Mining Co. v. Wier, 271 U. S. 609, 70 L. ed. 1114..... 5, 38
Johnson v. Maryland, 254 U. S. 51, 55, 65 L. ed. 126..... 4–5
Jones v. Hiawatha Gin & Mfg. Co., 17 Fed. (2d) 193..... 20
Kellogg v. Railway Co., 204 App. Div. 246..... 20, 23
Lawrence v. Commission, 286 U. S. 280, 76 L. ed. 1106..... 21
Lemke v. Farmers Grain Co., 258 U. S. 63, 66 L. ed. 461..... 3, 22, 30
Matthews v. Rogers, 284 U. S. 521..... 5, 40
McCullough v. Maryland, 4 Wheat, 316..... 4
M'Fadden v. A. G. S. R. Co., 241 Fed. 565..... 27
McFadden Rice Milling Co. v. T. & N. O. Ry. Co. (Tex.), 277 S. W. 193 40
McFadden & Bros. Agency v. A. & R. R. R., 126 I. C. C. 519..... 16
Merchants Exchange of St. Louis v. Missouri, 248 U. S. 365, 63 L. ed. 300 15
Miller v. G. M. & N. R. Co., 127 So. 692, 157 Miss. 69..... 2, 12
Miller v. Illinois Central R. Co., 111 So. 559, 146 Miss. 442..... 1, 12, 40
Missouri Pacific R. Co. v. Stroud, 267 U. S. 408, 69 L. ed. 385..... 22
Montgomery Cotton Exch. v. S. A. L. Ry., 109 I. C. C. 579, 582, 586 16
Munn v. People of Illinois, 94 U. S. 113, 24 L. ed. 77..... 14
National Lead Co. v. United States, 252 U. S. 140, 64 L. ed. 496..... 3, 20
New Jersey Tel. Co. v. State, 280 U. S. 346, 74 L. ed. 467..... 13, 40
New Orleans Cotton Exch. v. L. & N. R. R., 46 I. C. C. 712..... 16
Oil Company v. Central Railroad of Georgia, 204 Fed. 476..... 16
Oil Co. v. Burnett, Advance Sheets, 77 L. ed. 170..... 3, 21
Omaha Elevator Co. v. Union Pac. R. Co., 249 Fed. 832..... 18, 22

Page

Oregon-Washington R. & Nav. Co. v. Washington, 270 U. S. 87, 70 L. ed. 483 25
Ozark Pipe Line Corp. v. Monier, 266 U. S. 565, 69 L. ed. 443 36
People v. Perry, 291 Pac. (Cal.) 237 ..... 14, 22, 38
Pennsylvania R. Co. v. Commission, 250 U. S. 566, 63 L. ed. 1143 37
Railroad Commission v. C. B. & Q. Railroad, 257 U. S. 563, 588, 66 L. ed. 371, 22 A. L. R. 1086 22
Railroad Co. v. Dettlebach, 239 U. S. 588, 60 L. ed. 453 16
Savannah Traffic Bureau v. A. & R. R. R., 96 I. C. C. 749 16
Shafer v. Farmers Grain Co., 268 U. S. 198, 69 L. ed. 914 36
Southern Pac. Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498, 55 L. ed. 310 22
Southeastern Express Co. v. Miller, 264 U. S. 540, 68 L. ed. 841 37
Southern Pac. Co. v. Calexico, 288 Fed. 642 ..... 4, 13, 18, 22
Southern Railroad Co. v. Reed, 222 U. S. 424, 56 L. ed. 257 ..... 3, 16
Stafford v. Wallace, 258 U. S. 495, 66 L. ed. 735 ..... 3, 20, 21, 22, 25
State Tax Commission v. Interstate Natural Gas Company, 284 U. S. 41. 76 L. ed. 156 ..... 2, 12
State v. Grenada Cotton Compress, 85 So. 137, 123 Miss. 191 12
State v. S. A. & A. P. Ry. Co. (Texas), 73 S. W. 575 ..... 4, 19, 22, 28
Swift & Co. v. United States, 196 U. S. 375, 49 L. ed. 518, 25 Sup. Ct. Rep. 276 ..... 3, 20, 22, 25
Swift & Co. v. Hocking Valley R. Co., 112 N. E. 212, 93 Ohio St. 143, 243 U. S. 281, 61 L. ed. 722 16
Texas Transport, etc. v. New Orleans, 264 U. S. 150, 68 L. ed. 611 37
Thomas Cotton Co. v. I. C. R. R., 63 I. C. C. 89, 92 16
T. & N. O. R. Co. v. Brotherhood, 281 U. S. 570, 74 L. ed. 1046 40
United States v. Erie Railroad Co., 280 U. S. 101, 74 L. ed. 206 14
United States v. Gosho Company, 23 Fed. (2) 675 ..... 4, 14, 20, 22, 23
Western Oil Refining Co. v. Lipscomb, 244 U. S. 346, 61 L. ed. 1181 37

STATUTES CITED.

Chapter 10, U. S. C. A., Vol. 7, Title Warehouses, Chapter 313, 39 Stat. at Large 3, 20
Chapter 88, Laws of Mississippi, 1930, Section 220, page 202; Section 227, page 205, Section 242, page 211 5
Chapter 106, 42 Stat. at Large, 1282, 7 U. S. C. A. 97 21
Chapter 366, Section (1), 46 Stat. at Large 1463, 7 U. S. C. A. Supplement, Chapter 10 ..... 3, 21
Interstate Commerce Act, Section 1, 49 U. S. C. A. page 11 ..... 2, 15
Section 57, Chapter 88, Laws of Mississippi, 1930, page 162 2
Section 63, Chapter 88, Laws of Mississippi, 1930, page 163 ..... 4, 21
United States Warehouse Act 4
United States Warehouse Act, August 11, 1916, Chapter 313, Section (1), 39 Stat. at Large, 486, 7 U. S. C. A. 97 ..... 3, 20
46 Stat. at Large 1463, Chapter 10, U. S. C. A., Vol. 7, Section 217 .. 4

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1933

No. 166

FEDERAL COMPRESS & WAREHOUSE COMPANY ET AL., APPELLANTS,

vs.

E. R. McLEAN, SHERIFF AND TAX COLLECTOR, APPELLEE.

BRIEF FOR APPELLANTS.

A.

Subject Index.

B.

Case Index.

C.

Federal Compress & Warehouse Company et al. v. *McLean,* unreported officially as yet (147 So. 325).

D.

Paragraph (1), Rule 12 of the Rules of this Court having been complied with, the concise statement of the grounds

on which jurisdiction is invoked is made part hereof by reference to save prolixity.

Questions Involved and Specifications of Error.

Specification No. 1.

Section 57, Chapter 88, Laws of Mississippi, 1930, page 162, providing:

> "COTTON COMPRESSES.—Upon each person operating a cotton compress, as follows:
> "Where the number of bales of cotton compressed per annum is 40,000 bales, or less, and more than 30,000 bales ..... $400.00",

is unconstitutional because a burden upon interstate commerce.

(1) State privilege taxes conditioning the right to engage in interstate commerce unduly burdened it.

Mississippi Cases: *Miller* v. *G. M. & N. R. Co.*, 127 So. 692, 157 Miss. 69; *Miller* v. *Illinois Central R. Co.*, 111 So. 559, 146 Miss. 442.

Federal authorities: *State Tax Commission* v. *Interstate Natural Gas Company*, 284 U. S. 41, 76 L. ed. 156; *Board of Trustees of University of Illinois* v. *United States*, U. S. Advance Sheets, 77 L. ed. 651; *Anglo Chilean Nitrate Sales Co.* v. *Alabama*, U. S. Advance Sheets, 77 L. ed. 459.

(2) Cotton compression interstate commerce.

(*a*) So held *Matthews* v. *Rogers*, 284 U. S. 521, by the Three-Judge Court.

(*b*) Interstate Commerce Act, Section (1), 49 U. S. C. A., page 11, under transportation includes all services in connection with receipt, delivery, elevation, transfer and handling of property transported.

Southern Railroad Co. v. *Reed,* 222 U. S. 424, 56 L. ed. 257; *Commission* v. *Diffenbaugh,* 222 U. S. 42, 56 L. ed. 83.

(*c*) Congress by enactment of Chapter 10, U. S. C. A., Vol. 7, Title Warehouses, Chapter 313, 39 Stat. at Large, preempted jurisdiction, applying principles of *Swift & Company* v. *United States,* 196 U. S. 375, 49 L. ed. 518, *Stafford* v. *Wallace,* 258 U. S. 495, 66 L. ed. 735, *Board of Trade* v. *Olsen,* 262 U. S. 1, 67 L. ed. 837, *Carson Petroleum Co.* v. *Vial,* 279 U. S. 104, 73 L. ed. 631, and that thereunder done is interstate commerce—

(*d*) Reenactment of material portions United States Warehouse Act, regulations there as to having been before made constituted Congressional approval with consequent integration departmental regulations into National legislation.

Chapter 366, Section (1), 46 Stat. at Large 1463, 7 U. S. C. A. supplement, Chapter 10. *National Lead Co.* v. *United States,* 252 U. S. 140, 64 L. ed. 496; *Brewster* v. *Gage,* 280 U. S. 337, 74 L. ed. 463; *Oil Co.* v. *Burnett,* Advance Sheets, 77 L. ed. 170; *Cook* v. *United States,* Advance Sheets, 77 L. ed. 404.

(*e*) What is interstate commerce determinable upon broad consideration of the substance of the whole transaction.

Federal Trade Commission v. *Pacific States, etc. Assn.,* 273 U. S. 64.

Commerce comprehends all component parts of commercial intercourse.

Fuerst v. *Brewster,* 282 U. S. 494, 75 L. ed. 481; *Dahnke Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, 290, 291, 66 L. ed. 239; *Lemke* v. *Farmers Grain Co.,* 258 U. S. 63, 66 L. ed. 461; *Crescent Cotton Oil Co.* v. *Mississippi,* 257 U. S. 136, 66 L. ed. 170; *Carson Petroleum Co.* v. *Vial,* 279 U. S. 104, 73 L. ed. 631.

Especially because:

(1) Appellant contractually sole instrumentality of interstate carrier for cotton delivered at Cleveland. (Tr., 85-86.)

(2) 75 per cent of cotton received by appellant previously delivered to interstate carrier and stopped in transit thereafter moving under through bill from original point of origin to interstate destination.

A. G. S. R. Co. v. *M'Fadden*, 232 Fed. 1000; especially *Hohenberg* v. *L. & N. R. Co.*, 46 Fed. (2) 955; *United States* v. *Gosho Company*, 23 Fed. (2) 675; *Southern Pac. Co.* v. *Calexico*, 288 Fed. 642; *State* v. *Ry. Co.*, 73 S. W. 575.

Severability of statute impossible.

Bowman v. *Continental Oil Co.*, 256 U. S. 646, 65 L. ed. 1144; *Ballard* v. *Miss. Cotton Oil Co.*, 81 Miss. 507.

Specification No. 2.

Section 63, Chapter 88, Laws of Mississippi, 1930, page 163, providing:

> "Cotton Warehouses.—Upon each person operating a warehouse for the storage of cotton, whether in conjunction with a compress or not, as follows:
>
> * * * * * * *
>
> "Where the storage capacity of same is 35,000 bales or less, and more than 20,000 ..... $75.00",

unconstitutional because

(1) An undue burden as to cotton in interstate commerce, the specifications whereof under No. 1 are not here reiterated to save prolixity.

(2) A direct tax upon a Federal instrumentality licensed under United States Warehouse Act.

46 Stat. at Large 1463, Chapter 10 U. S. C. A., Vol. 7, Section 217; *McCullough* v. *Maryland*, 4 Wheat. 316; *Johnson*

v. *Maryland*, 254 U. S. 51, 55, 65 L. ed. 126; *Jaybird Mining Co.* v. *Wier*, 271 U. S. 609, 70 L. ed. 1114; *Gillespie* v. *Oklahoma*, 257 U. S. 501, 66 L. ed. 338.

Statement of Case.

McLean, Tax Collector, called "Appellee", was sued by Federal Compress & Warehouse Company, called "Appellant" or "Company", to recover above mentioned privilege taxes, whose payment was a condition to the conduct of appellant's business.

Chapter 88, Laws of Mississippi, 1930, Section 220, page 202, Section 227, page 205, Section 242, page 211.

The taxes being paid under protest pursuant to rule in *Matthews* v. *Rogers*, 284 U. S. 521, this action at law was instituted for their recovery.

Summarizing the more outstanding facts, but referring to the agreed facts with exhibits as requisite to a complete factual background, we submit:

Cotton when picked is ginned, that is, the seed are removed from the lint, herein called cotton, which is then wrapped into a bale weighing approximately 500 pounds, whose dimensions are, length 5 feet, width 3½ feet, height 4¼ feet.

Appellant's plant is a warehouse for storage, wherein there is a mechanical compress designed to reduce the bale's thickness to 18 inches so that by space conservation the carriers, rail and water, in interstate and foreign commerce load approximately three times as much cotton in the same space by the increased density as would otherwise be possible.

Appellant is duly licensed under the United States Warehouse Act and all cotton passing there through during the last five years has been for interstate or foreign commerce except ten uncompressed bales.

At Cleveland there are approximately 25 buyers engaged in the sole business of buying, selling and shipping cotton in interstate and foreign commerce.

Upon receipt by appellant of cotton it issues tickets therefor, conforming to the United States Warehouse Act, whereunder appellant has been licensed since 1916. Cotton is sold only by transfer of such receipts as the sole evidence of ownership. Approximately 75 per cent of cotton received by appellant is delivered to it under its contract with the railroad company for the purpose of compression and awaiting determination of final destination extra Mississippi. When that is determined the cotton is loaded out after being compressed and the through rate from point of origin to point of destination is charged just as if there had been no interruption at Cleveland. These rates are published by the carrier under the Act to Regulate Commerce, specify compression at carrier's option as a privilege available, and the charge therefor approved by the Interstate Commerce Commission of 15¢ per 100 pounds is paid by carrier after compression from the through rate, such compression being requisite for the conservation of carrier's space. The price of the cotton is fixed by reference to that obtained on exchanges in foreign cities, made available telegraphically at Cleveland. The cotton is sampled and it is uniformly known that the buyer is purchasing solely for the purpose of causing the cotton to be transported to points outside of Mississippi, both in the United States and foreign countries where the cotton is utilized.

The Company's warehouse at Cleveland has a capacity of more than 20,000 and less than 35,000 bales, and compresses more than 30,000 bales, but less than 40,000 bales.

A map of the property is annexed as Exhibit "A" (Tr. 84a), and all property taxes have been paid.

It takes from two and a half to three cars of uncompressed cotton into a concentration point, compared with one car of compressed cotton outbound and the Railroad companies have employed this Company as its limited agent by contract marked Exhibit "B", the pertinent portion thereof being (Tr. 85-86):

> "The intent and purpose of this agreement, among other things, is to confirm the Compress Company AS THE LIMITED AGENT of the Railroad Company for the purpose of receiving cotton from the Railroad Company, delivering cotton to the Railroad Company, loading and unloading cotton from and into the cars of said Railroad Company, making proper delivery of cotton in the custody of said Compress Company so far as concerns the interest of the Railroad Company, and as principal TO FURNISH THE PREMISES FOR THE USE OF THE RAILROAD COMPANY AS A COTTON DEPOT under and subject to all of the terms and conditions of this agreement and the lawfully published tariffs and regulations of the Railroad Company from time to time in effect with respect to the transportation and handling of cotton."

Pursuant to this provision, plaintiff has performed and is still performing.

A typical movement is illustrated as to 36 bales, moving under Expense Bill No. 402, dated December 16, 1932, Exhibit "C". This shipment moved into Cleveland on a floating rate from Laughlin (also mispelled Loflin) of 17¢ per 100 pounds. The cotton was weighed, retagged, weight sheet issued and 36 individual warehouse receipts issued in the form of Exhibit "E". The cotton was sampled, classed into lots of even running grade and staple, placing that part of the 36 bales with other cotton according to its respective class, subsequently shipping out said 36 bales in interstate and foreign commerce, as follows: (Tr. 79)

January 18, 1932—5 bales in 27 bale shipment marked V A T P/M

destined to Mays Landing, N. J.

January 20, 1932—1 bale in 6 bale shipment marked V A P P/M

destined to Goldville, S. C.

January 22, 1932—32 bales in 50 bale shipment marked G A A P/M

destined to Manchester, England

February 16, 1932—4 bales in 6 bale shipment marked E A A T/M

destined to Mays Landing, N. J.

February 24, 1932—1 bale in 7 bale shipment marked N C A N

destined to Liverpool, England

February 27, 1932—1 bale in 14 bale shipment marked V A X P/M

destined to Goldville, S. C.

March 3rd, 1932—1 bale in 179 bale shipment marked D H N T

destined to Gunterville, Ala.

The warehouse receipts when the shipments were made were surrendered, the shipping order is shown as Exhibit "F", and it moved on bill of lading shown as Exhibit "H".

The cotton remains in the warehouse until it is desired to be shipped. The identity of each bale of cotton is not preserved in reshipping from concentration point; substitution is permitted with the understanding that the integrity of the through rate from original shipping point to ultimate destination is preserved.

The rules and regulations covering compression, as well as the amount to be paid for compression is covered by Y. & M. V. tariff No. 44-G, I. C. C. No. 6828 and supplement No. 20, Exhibit "J", which has been regularly published

in pursuance of the Act to Regulate Commerce. The compression charge of 15¢ is paid by the carrier. An example of the movement is given (Tr. 80):

> "Below is an example showing how the Interstate rate applies to the five bales of cotton marked V A T P/M which originated in this 36 bale shipment:
>
> "It was shipped from Laughlin, Miss., to Cleveland, Miss., for the purposes mentioned herein and a floating—in rate of 17¢ per cwt. assessed. We find a through rate quoted from Laughlin, Miss., via Cleveland, Miss., to Mays Landing, N. J., *on carriers privilege of compression* of $1.17 per cwt. In the shipping of these five bales of cotton and the prepaying of the total amount of freight due (using 500 pounds to the bale) which is $5.85 per bale, there was delivered to the Railroad a freight bill covering the movement of five bales of cotton into Cleveland, Miss., for which a charge of 85¢ per bale (using 500 pounds to the bale) was assessed, and the Railroad accepted the freight bill for the full value thereof, and the shipper paid to them the difference between the rate of freight quoted from Laughlin, Miss., to Mays Landing, N. J., and the amount paid for the movement of the cotton from Laughlin, Miss., to Cleveland, Miss., which is $1.00 per cwt., or $5.00 per bale, and *out of the latter rate the Railroad paid the Cleveland compress* 15¢ per cwt. or 75¢ per bale for *compressing the cotton.*"

The Company has complied with all of the provisions of the United States Warehouse Act and all cotton shipped from it except ten bales during the last five years has been to interstate and foreign points.

The history of the introduction of cotton is then traced thus (Tr. 81):

> "Cotton was introduced, as it is thought, into Mississippi by the French, who are assumed to have bought it from San Domingo, and its first historical appear-

ance is at a garden at Natchez, in 1722. By 1820 Mississippi had become a substantial grower of cotton. By 1830 it was producing approximately 100,000 bales annually. 1840 it lead all of the states in the production of cotton with 380,803 bales. Then came the Civil War with the disorganization incident thereto. However, by 1869 it was enabled to produce in that year 451,950 bales, and 1879, 963,111 bales. In 1889 it produced 1,154,725 bales, ranking third among the states of the American Union, Texas being first, Georgia second. 1899 Mississippi produced 1,313,798 bales, with Texas first, and at present time the State is regarded as the second in the production of cotton as compared with the other states of the American Union.

"Annexed as Exhibit "K" is a statement showing the years beginning 1901, acres harvested, the yield in Mississippi and the total yield in Continental United States. The consumption of cotton in Mississippi is as shown by Exhibit "L" hereto annexed, but the number of active spindles in 1930 was only 131,284, but there has been a tendency for more spindles to become active. The total number of bales of cotton consumed by these mills does not come all from Mississippi. The proportion arising in Mississippi is impossible to ascertain, but by far the greater part is Mississippi cotton.

"Cotton is the great cash crop of Mississippi and has been so for many years last past. Cotton not consumed in Mississippi is exported from Mississippi."

"The general and uniform custom among buyers * * * as well as the general course of business is that a buyer enters into a contract either for the future or immediate delivery of a certain number of bales of cotton of a certain class, grade and staple, obligating himself by contract to deliver to a mill in a foreign state or country (Tr. 59) such cotton at a given price." Thereupon, the buyer goes upon the market and purchases cotton "of the kind and character which he is obligated to his customer to deliver, and will cause the delivery of said cotton in interstate and/or foreign commerce in accordance with the terms of his contract." A small portion is bought "when no contract

for the sale thereof exists, but, in such cases, it is bought with the sole anticipation * * * to procure a sale of said cotton to some foreign mill or foreign cotton merchant and to cause the same to be transported in interstate and/or foreign commerce * * * at such times as market conditions will justify.

"In the purchase of cotton as above set forth a small proportion of the cotton was purchased varying from one per cent to ten per cent constituting what is known in the cotton trade as 'overs', 'or cotton which does not fit' and said overs arising from reclassification, rejection and preparation. As an incident to the purchase and shipment of this cotton by buyer and seller, the same is sold locally, this small percentage of cotton for which they have no use, but which said latter cotton is eventually shipped out of the State of Mississippi by other cotton buyers of the same class for delivery on orders which they may have for cotton of this particular grade, type or staple."

Appellant's operation has been under bond and license from the Secretary of Agriculture, whose rules are annexed as an exhibit, appellant having made all reports as to condition, contents and operation thereunder required. The privilege taxes having been paid under protest this suit was brought for recovery, which the Circuit Judge denied and the Supreme Court affirmed his ruling, as appears in the opinion heretofore adverted to.

ARGUMENT.

Point I.

Section 57, Chapter 88, Laws Mississippi, 1930, Page 162, Unconstitutional as a Burden Upon Interstate Commerce.

Segregating the compression, which is not specifically mentioned in the United States Warehouse Act, and dealing therewith under the Warehouse tax, we submit:

(1) *State privilege taxes conditioning the right to engage in interstate commerce unduly burdened it.*

By prescribing the tax upon every bale compressed, the entire business was taxed. *State v. Bermuda Cotton Compress*, 85 So. 137, 123 Miss. 191.

Interstate and foreign commerce may not be burdened by a State privilege tax which, if not paid, makes engaging in interstate commerce a crime.

Miller v. C. M. & N. R. Co., 127 So. 402, 157 Miss. 69; *Miller v. Illinois Central Railroad Co.*, 111 So. 559, 146 Miss. 442; *State Tax Commission v. Interstate Natural Gas Co.*, 284 U. S. 41, 76 L. ed. 156; *Board of Trustees of University of Illinois v. United States*, U. S. Advance Sheets, 77 L. ed. 651; *Anglo Chilean Nitrate Sales Co. v. Alabama*, U. S. Advance Sheets, 77 L. ed. 459.

The narrow issue here, therefore, is was that done by appellant at its compress plant in whole or in part, excluding the Federal Warehouse feature, whereof later, interstate commerce. We unhesitatingly affirm that it was. The Supreme Court of Mississippi, however, held it was not so, saying thereanto:

> "This (entering into commerce) did not occur until it was delivered to the railroad *after being compressed* for transportation * * *. The assembling of the cotton in the warehouse and its compression are acts preliminary, convenient for, but not absolutely essential to its transportation to other states or countries."

citing therefor:

(a) *Coe v. Errol*, 116 U. S. 517, 29 L. ed. 715.

The issue there was narrow:

> "Are the products of a state, although intended for exportation to another state and partially prepared for that purpose by being deposited at a place or port of

shipment within the state, liable to *be taxed like other property within the state*."

(Italics ours unless otherwise noted.)

The court there was dealing with ad valorem taxation upon property actually situated within the state at the time of the incidence of the tax. Compare *New Jersey Tel. Co. v. State*, 280 U. S. 346, 74 L. ed. 467. That here at issue is an absolute prohibition of compression unless compliance is had with a license tax, compression without license being a crime, valid. The state court saying that it was not "*absolutely essential to its transportation to other states or countries*," but unless compressed business, as is could not be done.

Commerce comprehends all of the component parts of commercial intercourse between different states. *Purcell v. Brewster*, 282 U. S. 498, 75 L. ed. 481. And what is interstate commerce is to be determined upon a broad consideration of the substance of the whole transaction. *Federal Trade Commission* v. *Pac. States, etc. Assn.*, 273 U. S. 64, 71 L. ed. 539. "To hold that it could not be compressed before shipment would be to hold in effect that it could not be shipped at all * * * without being subjected to the burdens of the State government." *Southern Pacific Co. v. Calerion*, 288 Fed. 642.

"And though it moved (as to 75%) under a local bill of lading * * * into Montgomery, where it was concentrated, compressed and reshipped by rail to the port of export, it was interstate commerce from the beginning and properly subject to the combination of interstate rates from the point of origin to concentration point, and thence to destination." *Hohenberg v. L. & N. R. Co.*, 46 Fed. (2) 952, at 955, following *B. & O. S. W. R. Co. v. Settle*, 260 U. S. 166, 67 L. ed. 189. *Greater New York, etc. v. United States*, 47 Fed. (2) 156.

The rate for this movement was published under the Interstate Commerce Act Appellant acted as the local receiving agent of the carrier for this cotton. Its charges for compression were approved as a privilege under Carrier's privilege tariff and the carrier in collecting for the interstate shipment paid for its space conservation, rendering the movement possible, the rate approved by the Interstate Commerce Commission and the carrier so thus paying for that by appellant done was under the Commerce Act engaging in interstate transportation and all parties have so considered from time out of mind.

Compare *Carson Petroleum Co.* v. *Vial*, 279 U. S. 104, 73 L. Ed. 631; *United States* v. *Erie Railroad Co.*, 280 U. S. 101, 74 L. ed. 206; *United States* v. *Gosho Company*, (5 C. C. A.) 23 Fed. (2) 675; *Harrington* v. *Missouri Pacific R. Co.*, 254 Pac. (Kan.) 380; *People* v. *Perry*, 291 Pac. (Cal.) 237.

(*b*) *Diamond Match Co.* v. *Village of Ontonagon*, 188 U. S. 82, 47 L. Ed. 394, which likewise involved property, not privilege taxation, and held merely that logs in a boom from which they were subsequently to be shipped were not while awaiting delivery in interstate commerce. Therefrom we do not dissent.

(*c*) *Munn* v. *People of Illinois*, 94 U. S. 113, 24 L. Ed. 77, is the leading case establishing that the state might fix maximum prices for grain storage.

(*d*) *Cargill Company* v. *Minnesota*, 180 U. S. 452, 45 L. Ed. 619, involved the license operative for inspection purposes, whose cost was $1.00 per year, and the chief question was under the 14th Amendment with a factual background fundamentally different. There was no interference with or burden upon commerce thereby.

(*e*) *Merchants Exchange of St. Louis* v. *Missouri*, 248 U. S. 365, 63 L. Ed. 300, involved an inspection law of Missouri with a fundamentally different factual background.

(*f*) 12 C. J., pp. 38, 94, 103, but Section 142 thereof correctly states the rule:

> "A state may not regulate or burden interstate commerce and * * * taxation of interstate commerce is a prohibited form of regulation * * * a state may not require the taking out of a license and the payment of a tax for the privilege of engaging in and carrying on interstate commerce,"

and further held, following *Budd* v. *New York*, 143 U. S. 517, 36 L. Ed. 247, that warehouses may "become connected with interstate commerce."

With these obvious differentiations, we submit the decision of the Mississippi Court palpably erroneous because

(1) *Upon an identical factual background the District Court in* Matthews *v.* Rogers, supra, *held that done interstate commerce and the privilege tax void.* Compare *Chassaniol* v. *City of Greenwood*, 148 Southern (Mississippi), page 781.

(2) *By the Interstate Commerce Act, Section 1, 49 U. S. C. A., page 11, it is declared:*

> "The term '*transportation*' as used in this chapter shall include locomotives * * * and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, *and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.*"

This means not only the *physical instrumentalities* but all *services* in connection with receipt, delivery and han-

dling. *Southern Railroad Co. v. Reed*, 222 U. S. 424, 56 L. ed. 257; *Swift & Co. v. Hocking Valley R. Co.*, 112 N. E. 212, 93 Ohio St. 143, 243 U. S. 281, 61 L. ed. 722. Compare *Railroad Co. v. Dettlebach*, 239 U. S. 588, 60 L. ed. 453.

In *Commission v. Diffenbaugh*, 222 U. S. 42, 56 L. ed. 83, *Oil Company v. Central Railroad of Georgia*, 204 Fed. 476, compare Interstate Commerce Commission, in I. C. C. Docket No. 14940, Appendix A.

Concentration and compression has been regulated as interstate commerce. *Thomas Cotton Co. v. L. C. R. R.*, 63 I. C. C. 89, 92; *Commission v. C. of G. Ry.*, 45 I. C. C. 516, 519.

Concentration and compression of cotton are of benefit to carriers in the saving of equipment, movement into the concentration points being largely in less than car load lots, and from the concentration points in carloads, compressed cotton occupying substantially less space than uncompressed cotton. *Montgomery Cotton Exch. v. S. A. L. Ry.*, 109 I. C. C. 579, 582, 586. And as further said "Concentration in transit, like compression in transit reduces rather than increases carrier's expenses of transportation." In re *Cotton to Gulf Ports*, 123 I. C. C. 685, 702. And as said in *Savannah Traffic Bureau v. A. & R. R. R.*, 96 I. C. C. 749:

> "The real purposes of compression of cotton in *transit at the expense of the carrier are conservation of equipment and economy of transportation.*"

Under so-called carrier's privilege rates compression is not a transportation service for the shipper, and no obligation rests upon the carrier to perform the service or to pay therefor, except as its compression aids interstate commerce. *New Orleans Cotton Exch. v. L. & N. R. R.*, 46 I. C. C. 712; *Cotton from Tennessee River Landings*, 120 I. C. C. 51; *McFadden & Bros. Agency v. A. & R. R. R.*, 126

I. C. C. 519; *Augusta Cotton Exch.* v. *G. & F. Ry.*, 146 I. C. C. 245.

As was said in General Rate Structure Investigation, 17000, Part 3, Cotton, Page 605:

> "In the Mississippi Valley, on the other hand, which is more remote from consuming territory, a much larger proportion of the cotton, perhaps as much as 95 per cent, is compressed in transit by the carriers."

In the same case, page 628, the Commission further held:

> "These bases are made in the light of the existing compress charge east of the river of 15 cents, but this is not to be regarded as the expression of any opinion as to the propriety of the amount of that charge. Any change in the prevailing compress charge should be accompanied by a corresponding revision of the rates."

Thus, therefore, under this precise provision of the Commerce Act, Compression is had at the sole expense of the carrier and is paid for by the carrier to the press out of the through rate and thus as the consumer pays the tax this burden is passed directly to the carrier. *Gregg Dyeing Co.* v. *Query*, 286 U. S. 476, 76 L. Ed. 1236.

Note (Tr., 64):

> "And the amount paid for the movement of the cotton from Laughlin to Cleveland, Miss., which is $1.00 per cwt., or $5.00 per bale, and out of the latter rate the Railroad paid the Cleveland Compress 15¢ per cwt. or 75¢ per bale for compressing the cotton. Which is a direct imposition on that act in interstate commerce compression and so being may not be taxed by a license. *Pullman Co.* v. *Adams*, 189 U. S. 420, 47 L. Ed. 877."

Immediately preceeding page 167, Exhibit J, the name Laughlin is shown under Index No. 102, and Tariff No.

444 G, I. C. C. No. 6828 immediately follows for "Compression and Shipment" as underscored in red, and under rules show it governs "the handling of uncompressed cotton under this tariff as amended *to be compressed at Cleveland, Miss., and forwarded via Yazoo, etc. Railway.*" The Court will further notice special provision for compression in case of emergency, and on page 4 thereof, likewise in red, is shown the privilege under Rule 12 thus:

> "(a) Maximum allowance to compresses for compressing cotton, cotton linters or regins, in standard rectangular bales, will be fifteen (15) cents per 100 pounds.
>
> "(b) The amount to cover cost of compressing (not in excess of 15 cents per 100 pounds) included in the through rate, from point of origin (shown on inbound paid freight bill surrendered) to destination, will be deducted from proportion applying from Cleveland, Miss., to destination, and paid only to the compress company performing the service of compressing."

Therefore, under this precise published rate, this compression charge has been fixed as an integral element of the interstate movement and yet as such it is hereunder taxed.

In *Southern Pac. Co. v. Calexico*, 288 Fed. 642.

In *Omaha Elevator Co. v. Union Pac. R. Co.*, 249 Fed. 832, the Court said:

> "The facilities furnished by plaintiff were within the terms of the act to regulate commerce. If there ever existed any doubt as to this, such doubt was removed by the Hepburn amendment. *Penn Co. v. U. S.*, 236 U. S. 351, 362, 35 Sup. Ct. 370, 59 L. Ed. 616. Unless the allowance were covered by a published and filed rate schedule, they could not legally be collected. *Railway Co. v. Kirby*, 225 U. S. 155, 32 Sup. Ct. 648, 56 L. Ed. 1033, Ann. Cas. 1914A, 501; *Railroad Co. v. Mottley*, 219 U. S. 467, 31 Sup. Ct. 265, 55 L. Ed. 297,

34 L. R. A. (N. S.) 671; *Elwood Grain Co.* v. *Railway Co.*, 202 Fed. 845, 121 C. C. A. 153."

State v. *S. A. & A. P. Ry. Co.* (Tex.), 73 S. W. 575; *Alabama G. S. R. Co.* v. *M'Fadden & Bros.*, 232 F. 1003, where the Court said as to compression:

"I fail to see how the shipments from Albertville to Birmingham under the circumstances of the present case, can be construed as intrastate. The stoppage in transit for compression at Birmingham, the assembling of the cotton originating at Albertville with other cotton purchased at Birmingham and other points in Alabama, and the subsequent routing of the compressed cotton to points determined by the defendants according to their trade contracts, do not relieve the shipments originating at Albertville and billed to Birmingham, and subsequently billed from Albertville or Attalla to New Orleans, of their character as interstate commerce. There was no change of ownership from the time the cotton left Albertville until its arrival at New Orleans. It was continuously in the possession, custody, and control of the carrier, and the stoppage of the cotton at Birmingham for compression, still in the possession of the carriers, was merely *for a service incidental to its transit over the entire interstate route.*

"That the essential character of the commerce, not its mere accidents, such as its billing, its handling and concentration at Birmingham, or the loss of identity of the actual cotton shipped from Albertville, determines its interstate character, is no longer open to dispute. *Texas & New Orleans Railroad Co.* v. *Sabine Tram Co.*, 227 U. S. 111, 33 Sup. Ct. 229, 57 L. Ed. 442; *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 31 Sup. Ct. 279, 55 L. Ed. 310; *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 32 Sup. Ct. 22, 56 L. Ed. 83; *Ohio Railroad Commission* v. *Worthington*, 225 U. S. 101, 32 Sup. Ct. 653, 56 L. Ed. 1004."

United States v. *Gosho Co.* (5 CCA), 23 F. (2d) 675. *Compare Kellogg* v. *Railway Co.*, 204 App. Div. 246; *Harrington* v. *Missouri Pac. R. Co.* (Kan.), 254 Pac. 380. Without compression interstate and foreign commerce as now existent would perish off the earth, become impossible. *Hohenberg* v. *L. & N. R. Co.*, 46 F. (2d) 952, 955.

(c) *Congress by enactment of Chapter 10, U. S. C. A., Vol. 7, Title Warehouses, Chapter 313, 39 Stat. at Large, preempted jurisdiction.*

By the United States Warehouse Act, August 11, 1916, Chapter 313, Section (1), 39 Stat. at Large, 486, 7 U. S. C. A. 97, Congress preempted this field by declaring:

> "The term 'Warehouse' * * * shall be deemed to mean every building * * * in which any agricultural product is or may be stored for interstate or foreign commerce * * *."

Compare *Jones* v. *Hiawatha Gin & Mfg. Co.*, 17 Fed. (2d) 193, in which District Judge Holmes took judicial knowledge that nearly all cotton produced in Mississippi finds its way into interstate commerce and that as to such storage Congress possessed plenary power under the Commerce Clause of the Constitution.

The validity of this United States Warehouse Act is not challenged, the things thereat done under the regulations of the Department of Agriculture are not claimed to be usurpations, and with the knowledge of Congress, this course has been pursued for nearly 20 years.

National Lead Co. v. *United States, supra; Swift & Company* v. *United States*, 196 U. S. 375, 49 L. Ed. 518; *Stafford* v. *Wallace*, 258 U. S. 495, 66 L. Ed. 735; *Board of Trade* v. *Olsen*, 262 U. S. 1, 67 L. Ed. 837; *Carson Petroleum Co.* v. *Vial*, 279 U. S. 104, 73 L. Ed. 631.

(d) Reenactment of material portions United States Warehouse Act, regulations thereasto having been before made constituted Congressional approval with consequent integration departmental regulations into National legislation.

Upon August 11, 1916, cognizant of potential power existing under the Commerce clause and of the requisite exertion thereof demanded by the public welfare, Congress passed the United States Warehouse Act and thereafter, upon February 23, 1923, Chapter 106, 42 Stat. at Large, 1282, 7 U. S. C. A. 97, and upon March 2, 1931, Chapter 366, Section (1) et seq., 46 Stat. at Large, 1463, U. S. C. A. 1932 Supplement, page 12, amended to coordinate with that then deemed requisite, and with the knowledge of the departmental regulations then existent thereby these were integrated into national law.

Brewster v. *Gage*, 280 U. S. 337, 74 L. Ed. 463; *Oil Co.* v. *Burnett*, U. S. Advance Sheets, 77 L. Ed. 170; *Cook* v. *United States*, 77 L. Ed. 404.

(e) What is interstate commerce determinable upon broad consideration of the substance of the whole transaction.

"Commerce among the states is not a technical legal conception but a practical one drawn from the course of business." *Stafford* v. *Wallace*, 258 U. S. 495, 66 L. Ed. 735, and, "in passing on the constitutionality this Court is concerned only with its practical operation, not the precise form of descriptive words which may be applied to it." *Lawrence* v. *Commission*, 286 U. S. 280, 76 L. Ed. 1106, and "Commerce is a unit and does not regard state lines, and while under the Constitution interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that

the supreme authority, the nation, cannot exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority." *Railroad Commission* v. *C., B. & Q. Railroad*, 257 U. S. 563, 588, 66 L. Ed. 371, 22 A. L. R. 1086.

"There can be no divided authority over interstate commerce. * * * The Acts of Congress on that subject are supreme and exclusive." *Missouri Pacific R. Co.* v. *Stroud*, 267 U. S. 408, 69 L. Ed. 385.

We rely confidently upon principles announced in *Swift & Company* v. *United States*, 196 U. S. 375, 49 L. Ed. 518, as a milestone in the interpretation of the commerce clause of the Constitution.

Stafford v. *Wallace*, 258 U. S. 495, 66 L. Ed. 735; *Board of Trade* v. *Olsen*, 262 U. S. 1, 67 L. Ed. 837; *Carson Petroleum Co.* v. *Vial*, 279 U. S. 104, 73 L. Ed. 631, quoting to approve *Southern Pac. Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 55 L. Ed. 310; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 53. Compare *Southern Pac. Co.* v. *Calexico*, 288 Fed. 642; *Omaha Elevator Co.* v. *Union Pacific R. Co.*, 249 Fed. 862; *State* v. *S. A. & A. P. Ry. Co.*, 73 S. W. 575; *A. G. S. R. Co.* v. *McFadden*, 232 Fed. 1003; *United States* v. *Gosho Co.*, 23 Fed. (2d) 675; *Hohenberg* v. *L. & N. R. Co.*, 46 Fed. (2d) 952.

We refer to *People* v. *Perry* (Cal.), 291 Pac. 237, appended in its pertinent portions as Appendix B hereto.

Whereunder, consider:

(1) Appellant is contractually sole instrumentality of interstate carrier for cotton delivered at Cleveland (Tr. 85-86).

Appellant contracted with the carrier so as to become as to cotton the carrier's sole instrumentality of receipt

and delivery at Cleveland, the pertinent portion of the contract thereunto being heretofore quoted, page 7.

(2) 75% of cotton received by appellant previously delivered to interstate carrier and stopped in transit thereafter moving under through bill from original point of origin to interstate destination.

Compare *Hohenberg* v. *L. & N. R. Co.*, 46 Fed. (2d) 952, 955:

> "The cotton without dispute was originally intended for export, with transit privileges at Montgomery, and though it moved under a local bill of lading from Greenville and other points into Montgomery where it was concentrated, compressed and reshipped by rail to the port of export, it was interstate commerce from the beginning and properly subject to the combination of interstate rates from the point of origin to concentration point, and thence to destination." (Citing cases.)

Greater New York Live Poultry, etc. v. *United States*, 47 Fed. (2d) 156; *United States* v. *Gosho Company*, 23 Fed. (2d) 675; *A. G. S. R. Co.* v. *McFadden*, 232 Fed. 1003; *Kellogg* v. *Railway Co.*, 204 App. Div. 246; *Harrington* v. *Missouri Pacific R. Co.*, 254 Pac. 380.

The movement of cotton from Mississippi through appellant's plant to the outside world is interstate commerce, the plant being an integral element in an ever-moving stream whose motion is kept constant by the facilities enjoyed, whereover under the Interstate Commerce Act the Commission has constantly exercised supervision and seen to it that the carrier functioning in this movement has not transgressed the law and when the cotton was initially received by the carrier for transportation with privilege of concentration and compression at carrier's option at Cleveland, the interstate journey had begun.

Crescent Cotton Oil Co. v. Mississippi, 257 U. S. 136; 66 L. Ed. 170; *Hump Hairpin Mfg. Co. v. Emerson*, 258 U. S. 294.

POINT II.

Section 63, Chapter 88, Laws 1930, Page 163, Unconstitutional, Being (a) Undue Burden as to Cotton in Interstate Commerce, and (b) a Direct Tax Upon a Federal Instrumentality.

(a) *Undue burden upon interstate commerce.* All argument under Point I inserted by reference here to save prolixity.

(b) *A direct tax upon a Federal instrumentality.*

Congress, pursuant to the Commerce clause of the Federal Constitution, which provides, Article 1, Section 8, subdivision 3:

> "To regulate commerce with foreign nations and among the several states,"

found it requisite therefor to enact this Chapter upon warehouses, Chapter 40, entitled "United States Warehouse Act," whereunder and in accordance wherewith since 1916, this warehouse, independent of the Compress, has been consistently and continuously operated and with reference to the interstate features and the burdening thereof under this subdivision certain cases are cited whereto we ask the Court to make reference in considering Point I, for while pertinent to both, they are more pertinent here, and are not cited twice to save prolixity. This warehouse act could be unconstitutional if it did not service and serve that which was and truly is interstate commerce. Congress has declared it so and we assume no one questions now its validity in being solely to accommodate interstate commerce in cotton.

When Congress pursuant to paramount power acts, it preempts thereby the entire field. *Oregon Washington R. & Nav. Co.* v. *Washington*, 270 U. S. 87, 70 L. Ed. 483.

In *Board of Trade* v. *Olsen*, 262 U. S. 1, 67 L. Ed. 837, at page 850, Mr. Chief Justice Taft reviewed the entire question and declared as to the case of *Swift & Co.* v. *United States*, 196 U. S. 375, 49 L. Ed. 518, 25 Sup. Ct. Rep. 276:

> "That case was a milestone in the interpretation of the commerce clause of the Constitution. It recognized the great changes and developments in the business of this vast country, and drew again the dividing line between interstate and intrastate commerce where the Constitution intended it to be. It refused to permit local incidents of great interstate movement, which, *taken alone, were intrastate, to characterize the movement as such. The Swift Case merely fitted the commerce clause to the real and practical essence of modern business growth.*"

Compare *Stafford* v. *Wallace*, 258 U. S. 495, 66 L. Ed. 735. Compare *Carson Petroleum Co.* v. *Vial*, 279 U. S. 104, 73 L. Ed. 631, where, among other things, the Supreme Court said:

> "Since its decision this Court has had to consider several cases where there was transshipment of the commodity from local carriage in a state to a ship at an export port and conveyance thence to a foreign destination. There has been a liberal construction of what is continuity of the journey, in cases where the court finds from the circumstances that export trade has been actually intended and carried through.
>
> "In *Southern P. Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498, 55 L. Ed. 310, 31 Sup. Ct. Rep. 279, cotton oil cake and meal destined for export was bought by the intending exporter in Texas, Oklahoma, and Louisiana. It was shipped to him on bills of lading and waybills showing the point of origin in those states and the destination at Galves-

ton. The purchases were made for export, there being no consumption of the products at Galveston. His sales to foreign countries were sometimes for immediate and sometimes for future delivery, irrespective of whether he had the product on hand at Galveston. At times he had it on hand. At other times orders must be filled from cake or meal to be purchased in the interior or then in transit to him. When the cake reached Galveston it was ground into meal and sacked by the exporter, and for the meal thus ground and such meal as had been brought in ground form he took out ships' bills of lading made to his order. The court said (p. 526):

" 'The manufacture or concentration on the wharves of the terminal company are but incidents, under the circumstances presented by the record, in the transshipment of the products in export trade and their regulation is within the power of the Interstate Commerce Commission. To hold otherwise would be to disregard, as the Commission said, the substance of things and make evasions of the act of Congress quite easy. It makes no difference, therefore, that the shipments of the products were not made on through bill of lading or whether their initial point was Galveston, or some other place in Texas. They were all destined for export and by their delivery to the Galveston, Harrisburg & San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the terminal company being a part of the railway for such purpose.' "

This rest in the warehouse was but an incident of interstate commerce for the journey had been as to 75 per cent of the cotton actually begun by delivery to the rail carrier and receipt by this appellant in pursuance of a provision in its contract with the carrier of that cotton for the railroad company.

Compare (Tr. 70 et seq.) the agreed statement of facts, Exhibit D:

> "The intent and purpose of this agreement, among other things, is to confirm the Compress Company as the Limited Agent of the Railroad Company for the purposes of receiving cotton from the Railroad Company, delivering cotton to the Railroad Company, loading and unloading cotton from and into the cars of said Railroad Company, making proper delivery of cotton in the custody of said Compress Company so far as concerns the interest of the Railroad Company, and as principal to furnish the premises for the use of the Railroad Company as a cotton depot under and subject to all of the terms and conditions of this agreement and the lawfully published tariffs and regulations of the Railroad Company from time to time in effect with respect to the transportation and handling of cotton."

Thereat the warehouse was an instrumentality of transportation for the railroad company itself, which had begun the journey under laden of this cotton, and was obligated to move it from this place of temporary rest to ultimate destination as soon as determined and take for its service a compensation admeasured as from the initial point of origin and not from Cleveland.

In *M'Fadden* v. *A. G. S. R. Co.*, 241 Fed. 565, the Court of Appeals of this Circuit said:

> "Goods actually destined for points beyond the state of origin are necessarily in interstate commerce when they are delivered to the carrier and start in the course of transportation to another state. *Coe* v. *Errol,* 116 U. S. 517, 6 Sup. Ct. 475, 29 L. Ed. 715. This is true whether the goods are shipped on through bills of lading or on initial bills only to a terminal within the same state, where they are transshipped and thereafter transported on new bills of lading to a destination beyond the state. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission and Young,* 219 U. S. 498, 527, 31 Sup. Ct. 279, 55 L. Ed. 310; *Texas &*

New Orleans R. R. Co. v. *Sabine Tram Co.*, 227 U. S. 111, 33 Sup. Ct. 229, 57 L. Ed. 442; *Ohio R. R. Commission* v. *Worthington*, 225 U. S. 101, 32 Sup. Ct. 652, 56 L. Ed. 1004."

Compare *Chicago Portrait Co.* v. *Bellingham*, 270 Fed. 584.

In *State* v. *S. A. & A. P. Ry. Co.* (Texas), 73 S. W. 575, it is said:

"We take it for granted that no one will insist that the stoppage of cotton en route for compression alone would transform a foreign-billed shipment into a domestic one. Appellant appears to contend that classification, reweighing, and remarking had that effect on this shipment. Breyer's place of business was in Houston. He was engaged in buying cotton at different points in the state for export. He clearly had the right to compress; also to classify and grade his purchases according to the requirements of the particular consignment he desired to make; also he had a right to ship cotton from the points of purchase by foreign bills of lading. It is also clear that he could not classify and grade several lots of cotton, bought at different points, without collecting them at some point. And to our minds it is clear, also, that the act of classifying as it was done in this instance, at a central point on the lines of these several shipments, was not in any sense an act of preparation or perfection of the cotton for market. Nothing was done to the article itself, but to compress it, and as compressed it went on. It was already destined abroad (that is, all the lots of cotton from which the substitutions were made were under export bills to the same destination, and all were actually exported); and we think it should be held, under the circumstances, that the mere shifting of bales from one bill of lading to another was immaterial, and did not interrupt the foreign nature of the several shipments. One of the regulations of the commission seems to recognize that cotton may be concen-

trated through shipments at some point, and there classified, without constituting such shipments domestic, unless, in addition to such concentration and classification preparatory to final destination, it is brought to that point to determine the point of final destination. Section 4, Commodity Tariff, I-B, Sixty Annual Report Railroad Commission of Texas, p. 48. And it is uncontroverted that the final destination of this cotton was determined before the cotton was started from Yorktown. This appears to signify that, in the opinion of the commission, a foreign shipment does not lose that character by a classification of cotton en route. And it has been held that coal mined in a state, and started to another state, but stopped for separation and assortment, does not thereby lose its character as an interstate shipment. *State ex rel.* v. *Engle*, 34 N. J. Law, 425. We conclude that none of the said acts was sufficient to transform this into a local shipment."

In dealing with interstate commerce, compare *Furst* v. *Brewster*, 282 U. S. 498, 75 L. Ed. 481:

"Such commerce comprehends all the component parts of commercial intercourse between different states, and, according to established principle, any State statute which obstructs or lays a direct burden on the exercise of the privilege of engaging in interstate commerce is void under the common clause. *Crutcher* v. *Kentucky*, 141 U. S. 47, 57, 35 L. Ed. 649, 652, 11 S. Ct. 851; *Western U. Teleg. Co.* v. *Kansas*, 216 U. S. 1, 27, 54 L. Ed. 355, 366, 30 S. Ct. 190; *Dahnke-Walker Mill Co.* v. *Bondurant*, 257 U. S. 282, 290, 291, 66 L. Ed. 239, 243, 244, 44 S. Ct. 106. Accordingly, when a corporation goes into a State other than that of its origin to collect, according to the usual or prevailing methods, the amount which has become due in transactions in interstate commerce, the State cannot, consistently with the limitation arising from the commerce clause, obstruct the attainment of that

purpose. *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197, 204, 59 L. Ed. 193, 197, 35 S. Ct. 57."

If the state had authority thus to tax and prohibit the assembly of cotton at appellant's plant, it had the authority to prohibit appellant thereat from doing that requisite thus to afford this movement in interstate commerce. This power to tax involved the power to prohibit and if there be the power to prohibit, then, as to this movement in cotton, requisite for national and interstate welfare, Mississippi became paramount, and the United States subordinate, and in the determination of that which is interstate commerce, the court said in *Federal Trade Commission* v. *Pacific States P. T. Asso.*, 273 U. S. 64, 71 L. Ed. 539:

"And what is or is not interstate commerce is to be determined upon a broad consideration of the substance of the whole transaction. *Dozier* v. *Ala.* 218 U. S. 124, 128, 54 L. Ed. 965, 967, 28 L. R. A. (N. S.) 264, 30 Sup. Ct. Rep. 649. Such commerce is not confined to transportation, but comprehends all commercial intercourse between different States and all the component parts of that intercourse. And it includes the buying and selling of commodities for shipment from one state to another. *Dahnke-Walker Mill Co.* v. *Bondurant*, 257 U. S. 282, 290, 66 L. Ed. 239, 243, 42 Sup. Ct. Rep. 106; *Lemke* v. *Farmers' Grain Co.*, 258 U. S. 50, 55, 66 L. Ed. 458, 462, 42 Sup. Ct. Rep. 244."

We with confidence rely upon the case of *Lemke* v. *Farmers' Grain Co.*, 258 U. S. 53, 66 L. Ed. 461, where it was said:

"We pass to a consideration of the merits. The record discloses that North Dakota is a great grain-growing state, producing annually large crops, particularly wheat, for transportation beyond its borders. Complainant, and other buyers of like character, are own-

ers of elevators and purchasers of grain bought in North Dakota, to be shipped to and sold at terminal markets in other states, the principal markets being at Minneapolis and Duluth. There is practically no market in North Dakota for the grain purchased by complainant. The Minneapolis prices are received at the elevator of the complainant from Minneapolis four times daily, and are posted for the information of those interested. To these figures the buyer adds the freight and his 'spread,' or margin, of profit. The purchases are generally made with the intention of shipping the grain to Minneapolis. The grain is placed in the elevator for shipment, and loaded at once upon cars for shipment to Minneapolis and elsewhere outside the state of North Dakota. The producers know the basis upon which the grain is bought, but whoever pays the highest price gets the grain—Minneapolis, Duluth, or elsewhere. This method of purchasing, shipment, and sale is the general and usual course of business in the grain trade at the elevator of complainant and others similarly situated. The market for grain bought at Embden is outside the state of North Dakota, and it is an unusual thing to get an offer from a point within the state. After the grain is loaded upon the cars it is generally consigned to a commission merchant at Minneapolis. At the terminal market the grain is inspected and graded by inspectors licensed under Federal law.

"That such course of dealing constitutes interstate commerce, there can be no question. This Court has so held in many cases, and we have had occasion to discuss and decide the nature of such commerce in a case closely analogous in its facts, and altogether so in principle. *Dahnke-Walker Mill Co.* v. *Bondurant*, decided December 12, 1921 (257 U. S. 282, ante, 239, 42 Sup. Ct. Rep. 106). In that case the facts disclose that a company organized in Tennessee, and carrying on business there, went into Kentucky, and, through an agent there bought wheat for shipment to the company's mill in Tennessee. The State Court

held that the transaction was merely a purchase of wheat in Kentucky, and made the Tennessee Company amenable to the regulatory statutes of the State. This Court rejected the conclusion of the State Court, and held that the buying, no less than the selling, of grain, under such circumstances, was a part of interstate commerce, committed to national control by the Federal Constitution. Applying the principle of that decision, and the previous decisions of this Court, cited in the opinion, the complainant's course of dealing in the buying of grain, which it purchased and sold under the circumstances as herein disclosed, was interstate commerce. Being such, the State could not regulate the business by a statute which had the effect to control and burden interstate commerce.

"Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line between state and Federal authority under facts presented, which required a definition of interstate commerce where the right of state taxation was involved, or manufacture or commerce of an intrastate character was the subject of consideration. In those cases we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of Federal control. Cases of that type are not in conflict with principles recognized as controlling here. None of them indicates, much less decides, that interstate commerce does not include the buying and selling of products for shipment beyond state lines. It is true, as appellants contend, that after the wheat was delivered at complainant's elevator, or loaded on the cars for shipment, it might have been diverted to a local market or sent to a local mill. But such was not the course of business. The testimony shows that practically all the wheat purchased by the complainant was for shipment to and sale in the Minneapolis market. That was the course of business, and fixed and determined the interstate

character of the transactions. *Swift & Co.* v. *United States,* 196 U. S. 375, 49 L. Ed. 518, 25 Sup. Ct. Rep. 276; *Eureka Pipe Line Co.* v. *Hallanan,* decided by this Court December 12, 1921 (257 U. S. 265, ante, 227, 42 Sup. Ct. Rep. 101); and *United Fuel Gas Co.* v. *Hallanan,* decided the same day (257 U. S. 277, ante, 234, 42 Sup. Ct. Rep. 105)."

Further, note *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 290, 66 L. Ed. 243, where it was said:

"The commerce clause of the Constitution, Art. 1, Sec. 8, Cl. 3, expressly commits to Congress and impliedly withholds from the several states the power to regulate commerce among the latter. Such commerce is not confined to transportation from one state to another, but comprehends all commercial intercourse between different states and all the component parts of that intercourse. Where goods in one state are transported into another for purpose of sale, the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination, and while they are in the original packages. *Brown* v. *Maryland,* 12 Wheat. 419, 446, 447, 6 L. Ed. 678, 688, 689; *American Steel & Wire Co.* v. *Speed,* 192 U. S. 500, 519, 48 L. Ed. 538, 546, 24 Sup. Ct. Rep. 365. On the same principle, where goods are purchased in one state for transportation to another, the commerce includes the purchase quite as much as it does the transportation. *American Exp. Co.* v. *Iowa,* 196 U. S. 133, 143, 49 L. Ed. 417, 422, 25 Sup. Ct. Rep. 182. This has been recognized in many decisions construing the commerce clause. Thus it was said in *Welton* v. *Missouri,* 91 U. S. 275, 280, 23 L. Ed. 347, 349; ' "Commerce" is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale, and exchange of commodities.' In *Kidd* v. *Pearson,* 128 U. S. 1, 20, 32 L. Ed. 346, 350, 2 Inters. Com. Rep. 232, 9 Sup. Ct. Rep. 6, it was tersely

said: 'Buying and selling and the transportation incidental thereto constitute commerce.' In *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 13, 39 L. Ed. 325, 329, 15 Sup. Ct. Rep. 249, 'contracts to buy, sell, or exchange goods to be transportated among the several states' were declared 'part of interstate trade or commerce.' And in *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 241, 44 L. Ed. 136, 147, 20 Sup. Ct. Rep. 96, the court referred to the prior decisions as establishing that 'interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different states, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale and exchange of commodities.' In no case has the court made any distinction between buying and selling, or between buying for transportation to another state and transporting for sale in another state. Quite to the contrary, the import of the decisions has been that if the transportation was incidental to buying or selling, it was not material whether it came first or last.

"A corporation of one state may go into another, without obtaining the leave or license of the latter, for all the legitimate purposes of such commerce; and any statute of the latter state which obstructs or lays a burden on the exercise of this privilege is void under the commerce clause. *Crutcher* v. *Kentucky*, 141 U. S. 47, 57, 35 L. Ed. 649, 652, 11 Sup. Ct. Rep. 851; *Western U. Teleg. Co.* v. *Kansas*, 216 U. S. 1, 27, 54 L. Ed. 355, 366, 30 Sup. Ct. Rep. 190; *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 112, 54 L. Ed. 678, 687, 27 L. R. A. (N. S.) 493, 30 Sup. Ct. Rep. 481, 81 Ann. Cas. 1103; *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197, 59 L. Ed. 193, 35 Sup. Ct. Rep. 57."

In *Hump Hairpin Mfg. Co.* v. *Emmerson*, 258 U. S. 294, 66 L. Ed. 625, it was said:

"The turning point of these decisions is whether, in its incidence, the tax affects interstate commerce so

directly and immediately as to amount to a genuine and substantial regulation of, or restraint upon, it, or whether it affects it only incidentally or remotely, so that the tax is not in reality a burden, although in form it may touch, and, in fact, distinctly affect, it."

In *Crescent Cotton Oil Co.* v. *Mississippi*, 257 U. S. 136, 66 L. Ed. 170, on appeal from this Court, the Supreme Court said specifically:

*"After the seed has been committed to a carrier for interstate transport, * * * it passes from the regulatory power of the state into interstate commerce and under the national power."*

Here, pursuant to the commerce clause, the Congress has created this National Warehouse as a means whereby that requisite for national welfare may be conserved, and that by this warehouse done is by the United States strictly regulated, and 75 per cent of its contents is that already under bill of lading flowing in interstate commerce and quoad the remainder of 25 per cent this appellant is but an instrumentality requisite for that which is essential to move the cotton.

But it may be contended that as to this movement in this warehouse that the state may thereover assert whatever power is requisite as to intrastate commerce, but our position is, first, that nothing therein is intrastate commerce, as the entire movement has been subordinated to Federal Power, but if any portion be, then as to that portion the tax is general, covering every bale, and so being is thereby void.

Bowman v. *Continental Oil Co.*, 256 U. S. 646, 65 L. Ed. 1144, where it was declared:

"If the statute is inseparable, then both by its terms and by its legal operation and effect this tax is imposed generally upon the entire business conducted, includ-

ing interstate commerce as well as domestic; and the tax is void under authority of *Leloup* v. *Mobile*, 127 U. S. 640, 647, 32 L. Ed. 311, 314, 3 Inters. Com. Rep. 134, 8 Sup. Ct. Rep. 1380; *Crutcher* v. *Kentucky*, 141 U. S. 47, 58, 59, 35 L. Ed. 649, 652, 653, 11 Sup. Ct. Rep. 851; *Williams* v. *Talladega*, 226 U. S. 404, 419, 57 L. Ed. 275, 281, 33 Sup. Ct. Rep. 116; and other cases of that character."

In *Shafer* v. *Farmers Grain Co.*, 268 U. S. 198, 69 L. Ed. 914, it is said:

"Wheat—both with and without dockage—is a legitimate article of commerce and the subject of dealings that are nationwide. The right to buy it for shipment and to ship it, in interstate commerce, is not a privilege derived from state laws, and which they may fetter with conditions, but is a common right, the regulation of which is committed to Congress and denied to the states by the commerce clause of the Constitution."

See, also *Real Silk Hosiery Mills* v. *Portland*, 268 U. S. 334, 69 L. Ed. 982.

In *Ozark Pipe Line Corp.* v. *Monier*, 266 U. S. 565, 69 L. Ed. 443, it is said:

"The business actually carried on by appellant was exclusively in interstate commerce. The maintenance of an office, the purchase of supplies, employment of labor, maintenance and operation of telephone and telegraph lines and automobiles, and appellant's other acts within the state, were all exclusively in furtherance of its interstate business; and the property itself, however extensive or of whatever character, was likewise devoted only to that end. They were the means and instrumentalities by which that business was done, and in no proper sense constituted, or contributed to, the doing of a local business. The protection against imposition of burdens upon interstate commerce is practical and substantial, and extends to whatever is

necessary to the complete enjoyment of the right protected. *Heyman* v. *Hays, supra,* p. 186 (59 L. Ed. 531, 35 Sup. Ct. Rep. 403)."

So that thus under the circumstances done in Mississippi requisite for the movement of the interstate shipment did not subordinate same to state power. Compare *Flanagan* v. *Federal Coal Co.,* 267 U. S. 222, 69 L. Ed. 583; *Binderup* v. *Pathe Exch.,* 263 U. S. 291, 309, 68 L. Ed. 308, 316, 44 Sup. Ct. Rep. 96; *Texas Transport, etc.* v. *New Orleans,* 264 U. S. 150, 68 L. Ed. 611; *Southeastern Express Co.* v. *Miller,* 264 U. S. 540, 68 L. Ed. 841; *Atchison, T. & S. F.* v. *Harold,* 241 U. S. 371, 60 L. Ed. 1050.

In *Pennsylvania R. Co.* v. *Commission,* 250 U. S. 566, 63 L. Ed. 1143, the Court declared:

"Where the United States has exercised its exclusive power over interstate commerce so far as to take possession of the field the states no more can supplement its requirements than they can annul them."

Compare *Western Oil Refining Co.* v. *Lipscomb,* 244 U. S. 346, 61 L. Ed. 1181.

This warehouse was thus a Federal instrumentality, regulated and requisite, and so being, the state could not tax that therein done, because it was powerless to prohibit.

This question as to whether this be taxable as a Federal instrumentality was considered by the Court indirectly in *Independent Gin, etc.* v. *Dunwoody,* 30 F. (2d) 307, 40 Fed. (2) 1, and the conclusion there expresed was:

"The District Court, as appears from a memorandum opinion in the record, reached the conclusion that Congress did not intend to occupy the whole field as to the storing, etc., of agricultural products moving in interstate and foreign commerce and did not intend to exclude the jurisdiction of the states in regulating agri-

cultural warehouses and warehousemen, even though such regulations should tend to affect interstate or foreign commerce. We concur in this holding. *Merchants' Exchange* v. *Missouri*, 248 U. S. 365, 39 S. Ct. 114, 63 L. Ed. 300; *American Manf. Co.* v. *St. Louis*, 250 U. S. 459, 39 S. Ct. 522, 63 L. Ed. 1084."

It is true that there are certain declarations as to the validity of a tax under this Act sought to be imposed, but the remedy in equity was denied properly in *Henrietta Mills* v. *Rutherford County*, 281 U. S. 121, 74 L. Ed. 737, and the contention herein made is directly supported by the decisions of the Federal Supreme Court, to which reference has been made, and compare, especially, *People* v. *Perry*, quoted *supra*.

In *Jaybird Mining Co.* v. *Wier*, 271 U. S. 609, 70 L. Ed. 1114, it was held:

"It is elementary that the Federal Government in all its activities is independent of state control. This rule is broadly applied. And without congressional consent no Federal agency or instrumentality can be taxed by state authority. 'With regard to taxation, no matter how reasonable, or how universal and undiscriminating, the state's inability to interfere has been regarded as established since *M'Cullock* v. *Maryland*, 4 Wheat. 316, 4 L. Ed. 579.' *Johnson* v. *Maryland*, 254 U. S. 51, 55, 65 L. Ed. 126, 128, 41 Sup. Ct. Rep. 16. And see *Farmers' & M. Bank* v. *Minnesota*, 232 U. S. 516, 58 L. Ed. 706, 34 Sup. Ct. Rep. 354; *Choctaw, O. & G. R. Co.* v. *Harrison, supra; Gillespie* v. *Oklahoma*, 257 U. S. 501, 505, 66 L. Ed. 338, 340, 42 Sup. Ct. Rep. 171.

"This court has considered a number of cases quite like the one now before us. In *Choctaw, O. & G. R. Co.* v. *Harrison, supra*, there was an agreement by the United States that coal lands belonging in common to the members of the Choctaw and Chickasaw tribes should be mined, and that the royalties should be used

for the Indians. The state imposed a tax equal to 2 per centum on the gross receipts from the total production of coal from the mine. It was held that it was an occupation or privilege tax, and that one having a mining lease made in furtherance of the governmental purpose could not be subjected to that burden. In *Indian Territory Illuminating Oil Co.* v. *Oklahoma*, 240 U. S. 522, 60 L. Ed. 779, 36 Sup. Ct. Rep. 453, it was held that oil leases of land made by the Osage Tribe were under the protection of the Federal government, and that the state could not tax such leases either directly or as represented by the capital stock of the corporation owning them. It was said (p. 530): 'A tax upon the leases is a tax upon the power to make them, and could be used to destroy the power to make them. If they cannot be taxed as entities they cannot be taxed vicariously by taxing the stock, whose only value is their value, or by taking the stock as an evidence or measure of their value, * * *'. In *Howard* v. *Oil Companies*, 247 U. S. 503, 62 L. Ed. 1239, 38 Sup. Ct. Rep. 426, this court affirmed, per curiam, the judgment of the United States district court for the western district of Oklahoma enjoining the enforcement of a tax imposed by the state on the gross value of the production of oil and gas, less the royalty, under leases upon Osage lands made for the benefit of the Indians. In *Large Oil Co. v. Howard*, 248 U. S. 549, 63 L. Ed. 416, 39 Sup. Ct. Rep. 183, this court reversed, per curiam, the judgment of the supreme court of Oklahoma (63 Okla. 143, 163 Pac. 537) sustaining a tax on gross value of production of petroleum and gas, less the royalty interest, where the owner of the property sought to be taxed was engaged under the authority of the Secretary of the Interior in the production of oil and tribal lands of the Osage Nation. And in *Gillespie* v. *Oklahoma, supra*, it was held that the net income derived by a lessee from the sale of his share of the oil and gas received under leases of restricted Creek and Osage lands could not be taxed by the state. In each of these cases the tax was condemned as an

attempt to tax an instrumentality used by the United States in fulfilling its duties to the Indians."

The Court of Appeals, in *Matthews* v. *Rogers*, *supra*, held directly that such a tax as is here involved could not be imposed.

In *New Jersey Bell Tel. Co.* v. *Board*, 280 U. S. 346, 74 L. Ed. 467, the Supreme Court declared:

> "But, as the Constitution vests exclusively in the Congress power to regulate interstate and foreign commerce, a state may not tax, burden or interfere with such commerce or tax as such gross earnings derived therefrom or impose a license fee or other burden upon the occupation or the privilege of carrying on such commerce, whatever may be the instrumentalities or means employed to that end. *Pullman Co.* v. *Richardson*, 261 U. S. 330, 338, 67 L. Ed. 682, 686, 43 Sup. Ct. Rep. 366, and cases cited; *Sprout* v. *South Bend*, 277 U. S. 165, 171, 72 L. Ed. 833, 837, 62 A. L. R. 45, 48 Sup. Ct. Rep. 502. This tax can not be sustained if it is not upon the property, but is in fact a tax upon appellant's gross receipts from interstate and foreign commerce or a license fee to be computed thereupon."

T. & N. O. R. Co. v. *Brotherhood*, 281 U. S. 570, 74 L. Ed. 1046. *Di Santo* v. *Pennsylvania*, 273 U. S. 37, 71 L. Ed. 527; *McFadden Rice Milling Co.* v. *T. & N. O. Ry. Co.* (Tex.), 277 S. W. 193; *Miller* v. *Illinois Cent. R. Co.*, 111 So. 558, 146 Miss. 422.

We therefore submit that in this cause, the same should be reversed and remanded.

Respectfully submitted,

MARCELLUS GREEN,
GARNER W. GREEN,
FORREST B. JACKSON,
Attorneys for Appellant.

APPENDIX A.

The Interstate Commerce Commission, in I. C. C. Docket No. 14940, said:

> "Cotton, after being harvested, is ginned and usually sold by the producer at practically every local station in the cotton-producing section. The buyers assemble or concentrate it at points best suited for the particular merchant's convenience, where facilities are maintained for its merchandising and storage. Merchandising includes grading and arranging in lots of even running grade and staple, sampling and resampling, tagging, marking, patching, reconditioning, rebaling and assembling in shipment lots. It is usually sold by the cotton merchants in multiples of 100 bales of even grade and staple and in order to assemble lots of that size it is necessary to concentrate it. In former years cotton was principally concentrated at a few interior points, such as St. Louis, Mo., and Memphis, Tenn., and at the ports, including New Orleans and Galveston. It was then shipped by the farmer producer, or interior general merchant who frequently financed the growers, to commission merchants or cotton factors at the large markets where it was sold. After the many expenses incident to transportation and merchandising had been deducted, little proceeds were left for the grower. Now the producer usually sells his cotton at his nearest local station, where buyers compete for its purchase, and the producer knows at the time it leaves his hands the price he is to receive. As the interior concentration points increased in number, the facilities for handling the crop, particularly those for storage, greatly improved. It is represented by experienced cotton producers, cotton merchants, and bankers that the concentration of cotton at interior points has been helpful to the growers, merchants handling cotton or general merchandise, and banking institutions, has created many important cotton markets and has promoted the general prosperity of the cotton-producing territory. Concentra-

tion has been also of substantial advantage to the carriers as it increases the car loading beyond the transit points, conserves equipment when it is in greatest demand, and thus promotes economy of operation.

"The services rendered by the carriers in the concentration of cotton are generally the same as on other traffic accorded transit. The inbound shipments are switched to the warehouse or compress, notice of arrival is given and inbound freight charges are collected. *When the shipments are forwarded to final destination the outbound rates are collected, but subsequently the total charges are adjusted to the basis of the through rates from origin to destination, plus other charges such as for out-of-line or back-haul services.* The services of the carrier in handling cotton for *compression* are substantially the same as for *concentration* in so far as the movement into and out of the concentration or compress points is concerned, but, when the cotton is compressed, the compress companies are required to unload and load the cars. When cotton is concentrated at the point where the carrier compresses it, the service rendered by the carrier is materially less than where concentration and compression take place at different points.

"Compression of cotton was first inaugurated at the ports, primarily in the interest of increasing the loading of ships. The charges for such compression at that time were either paid by the *water carrier* or the rates on such cotton *were made sufficiently lower* than on gin baled or flat cotton to warrant compression by the shipper. Subsequently, the rail carriers recognized that it was more economical to handle compressed than flat cotton and compresses were located at interior points. In the beginning, the interior compresses were either *operated* or *controlled* by the railroads; in some instances they were owned by the railroads and in others by railroad officials. Ultimately, the ownership of the compresses changed and it is testified that those in this territory are now operated by interests in no

way associated with or controlled by the railroads or their officials."

APPENDIX B.

In *People* v. *Perry* (Cal.), 291 Pac. 237, there was at issue as to the deciduous fruit precisely that now here at issue and there that Court said:

> "It is a matter of common knowledge, of which this court will take judicial notice, that the cultivation and production of deciduous fruit in this state is one of its largest and most important industries and one in which millions of dollars have been invested, and from which thousands of its citizens derive the means of their subsistence. The statute under consideration does not purport to operate upon persons dealing in fruit purchased for consumption or processing within this state. It must therefore operate upon those dealing in that surplus of this product beyond that required for local consumption and processing and which would necessarily enter the channels of interstate commerce, and upon that class, and that class alone, would this statute operate.
>
> "Assuming, then, in construing the amended information before us, that the fruit purchased by the defendant was designated for shipment into another state or a foreign country, we are confronted with the question as to the precise point in this transaction it would cease to be an intrastate transaction and assume an interstate character and become subjected to regulations prescribed by Congress. Appellant contends that the purchase having been consummated, and the title and possession having been transferred to the defendant as a cash buyer, the transaction was closed, and that the same did not partake of the character of an interstate transaction. But we cannot accede to this view. The rule is well settled that when, in the due course of business, the products of a state are purchased therein for the purpose and with the design of transferring and utilizing the same in another state,

that the initial act of a consummated purchase, and resulting change of title and possession together with all subsequent transactions including transportation and delivery at its destination, is an interstate transaction. In the case of *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 42 S. Ct. 106, 108, 66 L. ed. 239, the Supreme Court of the United States said:

"'Where goods in one state are transported into another for purposes of sale, the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination and while they are in the original packages. *Brown* v. *Maryland*, 12 Wheat. 419, 446-447, 6 L. ed. 678; *American Steel & Wire Co.* v. *Speed*, 192 U. S. 500, 519, 24 S. Ct. 365, 48 L. ed. 538. On the same principle, where goods are purchased in one state for transportation to another, the commerce includes the purchase quite as much as it does the transportation. *American Express Co.* v. *Iowa*, 196 U. S. 133, 143, 25 S. Ct. 182, 49 L. ed. 417. This has been recognized in many decisions construing the commerce clause. Thus it was said in *Welton* v. *Missouri*, 91 U. S. 275, 280, 23 L. ed. 347: ' 'Commerce' is a term of the largest import. It comprehends intercourse for the purpose of trade in any and all of its forms, including transportation, purchase, sale, and exchange of commodities.'

"'In *Kidd* v. *Pearson*, 128 U. S. 1, 20, 9 S. Ct. 6, 10, 32 L. ed. 346, it was tersely said: 'Buying and selling and the transportation incidental thereto constitute commerce.'

"'In *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 13, 15 S. Ct. 249, 254, 39 L. ed. 325,' 'contracts to buy, sell, or exchange goods to be transported among the several states' were declared 'part of interstate trade or commerce.'

"In the case of *Farmers' Grain Co.* v. *Langer* (C. C. A.) 273 F. 635, 636, 19 A. L. R. 148, after reviewing many decisions of the United States Supreme Court in which this question was involved, the court concludes that the purchases of grain by dealers in North Dakota

for shipment to terminal markets in another state are a part of the unit of interstate commerce involved in the shipments. And the Supreme Court of the United States, in *Lemke* v. *Farmers' Grain Co.*, 258 U. S. 50, 42 S. Ct. 244, 247, 66 L. ed. 458, in reviewing the decision of *Farmers' Grain Co.* v. *Langer, supra,* said: 'Nor will it do to say that the state law acts before the interstate transaction begins. It seizes upon the grain and controls its purchase at the beginning of interstate commerce. *Pennsylvania Railroad Co.* v. *Clark Brothers Coal Mining Co.*, 238 U. S. 456, 468, 35 S. Ct. 896, 59 L. ed. 1406.'

"We conclude, therefore, that the purchase of fruit involved in this case was an interstate transaction and one subject to the control of Congress."

INDEX.

Subject Index.

Reply brief for appellant:	Page
Statement	1
Opposite counsel's Point I	3
Point I. "The imposition of a State privilege tax upon the operator of a cotton warehouse and compress, for the privilege of storing and compressing cotton concentrated at Cleveland, Mississippi, does not violate Paragraph 3 of Section 8 of Article 1 of the Constitution of the United States, as imposing a State tax upon an instrumentality engaged in interstate commerce because the movement of cotton concentrated at Cleveland, Mississippi, in interstate commerce, does not begin until the storage and compress charges are paid, and the cotton is delivered to a carrier, for transportation, with a destination fixed at a point beyond the boundaries of the State of Mississippi" (Brief, p. 10)	3
Whereto we reply	3
1. Mississippi Supreme Court in Chassaniol v. Greenwood, supra, holds buying and selling of cotton shipped in on the railroad, predating compression, interstate commerce, as to movement from appellant's plant	3
2. Appellant an instrumentality of the railroad company for interstate cotton shipment	5
3. Congressional occupation of its power over interstate commerce changed the so-called "common-law rule"	7
4. The stream theory	7
5. Judge Anderson's dissent in the Chassaniol case	9
6. Cotton buyer's connection with the cotton makes it a part of interstate commerce before compression	11
7. Acts preliminary and convenient for, but not absolutely essential, to interstate commerce, make this movement interstate	11
8. Certain cases differentiated	12
9. General Oil Co. v. Crane, 209 U. S. 212, 52 L. Ed. 754	12
10. Cases further distinguished	13

Index of Cases.

American Mfg. Co. v. St. Louis, 250 U. S. 459, 63 L. Ed. 1084	12
Carson Petroleum Co. v. Vial, 279 U. S. 94, 75 L. Ed. 626	12

Page

Carson Petroleum Co. v. Vial, 279 U. S. 105..... 12
Chassaniol v. Greenwood, 147 So. (Miss., 1933) 783..... 1
Coe v. Errol, 116 U. S. 517, 29 L. Ed. 715..... 12
Crescent Oil Co. v. State of Miss., 257 U. S. 129, 66 L. Ed. 166..... 12
Diamond Match Co. v. Ontonagon, 188 U. S. 81, 47 L. Ed. 394..... 12
Philadelphia, etc., Co. v. Commonwealth, 82 U. S. 164..... 14
Heisler v. Colliery Co., 260 U. S. 245, 67 L. Ed. 237..... 14
Hope Natural Gas Co. v. Hall, 274 U. S. 284..... 14
Jones v. Hiawatha Gin & Milling Co., 17 Fed. (2) 193..... 7
Matthews v. Rogers, 284 U. S. 521, 76 L. Ed. 447..... 2
Merchants Exchange v. Missouri, 248 U. S. 365, 63 L. Ed. 300..... 14
Minnesota v. Blasius, Adv. Sheets, November 7, 1933..... 8
Oliver Iron Mining Co. v. Lord, 262 U. S. 172, 67 L. Ed. 929..... 14
Sonneborn Bros. v. Keeling, 262 U. S. 515, 67 L. Ed. 1100..... 11
Southern Pacific Co. v. Calexico, 288 Fed. 642..... 12
Stafford v. Wallace, 258 U. S. 495..... 8
Swift & Co. v. United States, 196 U. S. 395, 49 L. Ed. 518..... 7, 8
Utah Power & Light Co. v. Pfost, 286 U. S. 163, 76 L. Ed. 1038..... 14

STATUTES CITED.

United States Warehouse Act, Chapter 10, U. S. C. A., Vol. 7, Title Warehouses, Chapter 313, 39 Stat. at Large..... 7
Interstate Commerce Act, Section (1), U. S. C. A., page 11..... 7

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933.

No. 166

FEDERAL COMPRESS AND WAREHOUSE COMPANY ET AL., APPELLANTS,

vs.

E. R. McLEAN, SHERIFF AND TAX COLLECTOR, APPELLEE.

REPLY BRIEF FOR APPELLANT.

Opposite counsel state (Brief, p. 3): "In the purchase of such cotton, there is from one to ten per cent of same that is not fit for interstate sale and shipment, which said cotton is sold locally." This has reference to the "overs" (Tr. 77), which are acquired "as an incident to the purchase and shipment of this cotton by buyer and sellers." Compare *Chassaniol* v. *Greenwood,* 148 So. (Miss., 1933) 783, wherein that here recited as an incident is made more explicit,

> "That a very small proportion of the cotton purchased by shippers (not exceeding 10 per cent), is bought when no contract for sale therefor exists; * * *. That the buyer cannot fill his orders without buying

> lots of cotton in their entirety because growers will sell no other way, and that, thereby, buyers accumulate small stocks of cotton, not exceeding 10 per cent of the amount they handle, being only a necessary incident to and concomitant of those purchases which are made for the purpose of filling specific contracts."

And, with deference, counsel is in error in stating that from one to ten per cent is not fit for interstate sale, for the agreed transcript shows that all except ten bales, which were shipped uncompressed, have moved in interstate commerce from appellant's plant (Tr. 80).

Compare dissenting opinion, Anderson, J., in the case, *supra*, where it is said:

> "In other words, under the facts in this case, the overage is as much a part of the interstate commerce as the 90 per cent. Appellants had the right, and did everything in their power, to carry on interstate commerce exclusively, but under the conditions existing they could not do so without carrying along this overage of 10 per cent. This being true, the state could not tax one without taxing the other. If the state could reach down into the stream of interstate commerce and dip out the domestic business for state regulation without hampering the free flow of the stream, its regulation would be valid. On the other hand, if the separation of the domestic business from the foreign would interfere with the free flow of the stream, the action of the state would be illegal."

With deference, full familiarity with the cotton business, as reflected by the agreed facts, is requisite to a thorough understanding of that here at issue, and therefore the decision by the local judges in *Matthews* v. *Rogers*, 284 U. S. 521, 76 L. Ed. 447, should be considered the controlling precedent as to factual background.

I.

Answering Opposite Counsel's Point I.

"THE IMPOSITION OF A STATE PRIVILEGE TAX UPON THE OPERATOR OF A COTTON WAREHOUSE AND COMPRESS, FOR THE PRIVILEGE OF STORING AND COMPRESSING COTTON CONCENTRATED AT CLEVELAND, MISSISSIPPI, DOES NOT VIOLATE PARAGRAPH 3 OF SECTION 8 OF ARTICLE 1 OF THE CONSTITUTION OF THE UNITED STATES, AS IMPOSING A STATE TAX UPON AN INSTRUMENTALITY ENGAGED IN INTERSTATE COMMERCE BECAUSE THE MOVEMENT OF COTTON CONCENTRATED AT CLEVELAND, MISSISSIPPI, IN INTERSTATE COMMERCE, DOES NOT BEGIN UNTIL THE STORAGE AND COMPRESS CHARGES ARE PAID, AND THE COTTON IS DELIVERED TO A CARRIER, FOR TRANSPORTATION, WITH A DESTINATION FIXED AT A POINT BEYOND THE BOUNDARIES OF THE STATE OF MISSISSIPPI" (Brief, p. 10).

Whereto we reply:

1. *Mississippi Supreme Court in Chassaniol* v. *Greenwood, supra, holds buying and selling of cotton shipped in on the railroad, predating compression, interstate commerce, as to movement from appellant's plant.*

Since the decision herein, Mississippi Supreme Court, *en banc*, decided *Chassaniol* v. *Greenwood*, the decision herein having been by Division A, not the entire court. The Chassaniol case had to do with the validity of a tax upon cotton buyers imposed by Greenwood, the cotton buyer doing those acts delineated herein, and thereunder it was held by the Mississippi Supreme Court, with deference, that all business save as to said "overs" and truck cotton was interstate commerce, but as to overs and truck cotton the State had power to tax as an intrastate transaction, and so did, the court being at pains to point out that over intrastate commerce the Legislature knew it possessed

power, and likewise knew that it might not tax interstate commerce, the court there saying:

> "The Legislature has facilities and opportunities for knowing business customs and conditions within the state. There is, in fact, much buying and selling of cotton in this state that is, in no sense, interstate commerce, and the Legislature knew this to be true. Cotton is a great commodity of this state and is bought and sold by people engaged in intrastate business to a considerable degree, at a considerable profit."

And further:

> "In the case before us, as to the 30% that is transported by trucks and wagons or other private conveyances and placed in storage in Greenwood, and not consigned to anyone outside the state, the property is not in interstate commerce. The owner might withdraw it, or sell it, whenever he pleases."

Compare opinion of Anderson, J., dissenting.

Therefore as to all of the cotton except the 30 per cent and "overs", we have thus a decision by Mississippi's Supreme Court, subsequent to this case, that those who bought and sold that cotton originating on the railroad were engaged in interstate commerce as to the very cotton that was compressed pursuant to such buying and selling, but nevertheless, only, at the instance of the carrier for space conservation, who paid therefor that allowed by the Interstate Commerce Commission under published tariffs. As this step preceded the compression at appellant's plant, we have the anomalous condition that as at an antecedent date in a through movement, the cotton is in interstate commerce as to 70 per cent of it. Then under our opinion, it ceases to be in interstate commerce and becomes intrastate commerce, and thereafter again becomes interstate commerce when actually loaded on the cars, in pursuance

of its previous venture in interstate commerce when bought and sold; as to that cotton coming in by rail, appellant is the sole depot of the railroad company.

2. *Appellant an Instrumentality of the Railroad Company for Interstate Cotton Shipment.*

The contract between the parties provides:

> "That by reason of the nature of cotton and the commercial practices and customs under which it is handled, and by reason of the conditions of buying, selling, storing and transporting it, and by reason of and for the general convenience of all concerned, * * *
>
> "The intent and purpose of this agreement, * * * is to confirm the Compress Company as the Limited Agent of the railroad company for the purposes of receiving cotton from the railroad company, delivering cotton to the railroad company, loading and unloading cotton from and into the cars of said railroad company * * * and as principal to furnish the premises for the use of the railroad company as a cotton depot under and subject to all of the terms and conditions of this agreement and the lawfully published tariffs and regulations of the railroad company * * *."

Thereunder, on behalf of the railroad company, the appellant will "promptly receive and receipt for, unload from cars, shelter when practicable, compress and load into cars, in order of receipt, or as may be otherwise directed by the railroad company, the following cotton:

(*a*) Cotton delivered by its owner to compress company for shipment;

(*b*) Cotton consigned to compress points on straight bill of lading;

(*c*) Cotton destined to compress points, consigned to "order", or in any other manner;

(*d*) Cotton covered by through bills of lading delivered by the railroad company to the compress company for compression;

and thereunder the compress company was to "promptly load cotton when directed by the railroad company, properly marked and compressed to comply with all applicable tariff and or maritime regulations, into cars in quantities (whenever practicable) of not less than 75 bales in a 36 foot car 8½ feet high, other cars proportionately," and (Tr. 90)

> "To compress all cotton to a density of at least 22½ pounds per cubic foot and to place on each bale intended for export not less than eight bands and * * * the density of compression and the banding on shipments moving through ports will conform to the maritime regulations of the port through which the cotton moves * * *";

and, further;

> "The railroad company agrees to pay and the compress company to accept, in full payment, in so far as the railroad company is concerned, for all services hereunder, the compression allowance authorized in the railroad company's current tariffs on cotton, compressed by the compress company for the railroad company's account and moves from the compress over the rails of the railroad company" (Tr. 91).

Quoad cotton, therefore, the plant of appellant was the railroad company's depot for receipt and shipment, and its service to the carrier was paid for by the carrier for space conservation of the carrier's equipment, and the holding of the Mississippi court, with deference, that that done at the plant after the sale, which was interstate commerce, was intrastate commerce, is inconsistent and not in any wise conclusive.

3. Congressional Occupation of Its Power Over Interstate Commerce Changed the So-called "Common-law rule."

The cases relied upon by appellee may possibly express "the common law" as to when commerce becomes interstate, but under the Constitution, when acts are preliminary and convenient for interstate commerce, the Congress may thereunto pass statutes which thereby convert these incidents into interstate commerce. Wherein consider:

(*a*) The United States Warehouse Act. *Jones* v. *Hiawatha Gin & Milling Co.*, 17 Fed. (2) 193, Chapter 10, U. S. C. A., Vol. 7, Title Warehouses, Chapter 313, 39 Stat. at Large.

(*b*) Interstate Commerce Act, Section (1), U. S. C. A., page 11, declaring that commerce embraces "all services in connection with the receipt, delivery, elevation, and transfer in transit * * *. storage and handling of property transported," and thereunto we have the congressional declaration making that hereunder done interstate commerce, whereunto the Interstate Commerce Commission has fixed the price on carrier's privilege of compression east of the river at 15 cents, and is now investigating the whole rate structure as to compression west of the river, in the Southwestern Rate Investigation, having thereover assumed full jurisdiction pursuant to the Interstate Commerce Act.

4. The Stream Theory.

That which appellee does is to isolate the function performed by appellant and look at it, not coordinated with that which precedes, that which follows, that of which it is a part. Given the stream theory announced first authoritatively in *Swift & Co.* v. *United States*, 196 U. S. 395, 49

L. Ed. 518, as fitting "the commerce clause to the real and practical essence of modern business growth," counsel wrongfully deals with the compression as intrastate commerce, and breaks the continuity; does not see the forest for the trees, when Congress has, pursuant thereto, enacted the Warehouse Act and applied the Interstate Commerce Act.

Compare *Minnesota* v. *Blasius,* Adv. Sheets, November 7, 1933, where the Chief Justice said:

> "Applying the cardinal principle that interstate commerce as contemplated by the Constitution 'is not a technical legal conception,' this Court said, in *Swift & Company* v. *United States,* 196 U. S. 375, 398, 399: 'When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce.' "

Therein, likewise, was approved *Stafford* v. *Wallace,* 258 U. S. 495.

As said in the *Blasius case, supra:*

> "But, by reason of a break in the transit, the property may come to rest within a State and become subject to the power of the State to impose a nondiscriminatory property tax. Such an exertion of State power belongs to that class of cases in which, by virtue of the nature and importance of local concerns, the State may act until Congress, if it has paramount authority over the subject, substitutes its own regulation (Note No. 4). The 'crucial question', in determining whether the State's taxing power may thus be exerted, is that of 'continuity of transit.' *Carson Petroleum Co.* v. *Vial,* 279 U. S. 95, 101."

It being there further declared:

> "The question is always one of substance, and in each case it is necessary to consider the particular occasion or purpose of the interruption during which the tax is sought to be levied. *Champlain Company* v. *Brattleboro, supra,* p. 377; *Southern Pacific Terminal Co.* v. *Interstate Commerce Commisssion,* 219 U. S. 498; *Texas & N. O. R. R. Co.* v. *Sabine Tram Co.,* 227 U. S. 111; *Carson Petroleum Co.* v. *Vial, supra.* The mere power of the owner to divert the shipment already started does not take it out of interstate commerce if it appear 'that the journey has already begun in good faith and temporary interruption of the passage is reasonable and in furtherance of the intended transportation.' *Hughes Bros. Co.* v. *Minnesota,* 272 U. S. 469, 476.
>
> "Where property has come to rest within a State, being held there at the pleasure of the owner, for disposal or use, so that he may dispose of it either within the State, or for shipment elsewhere, as his interest dictates, it is deemed to be a part of the general mass of property within the State and is thus subject to its taxing power."

5. *Judge Anderson's Dissent in the Chassaniol Case.*

There he said, with deference, correctly:

> "Before getting down to the exact question involved it would be very well to have in mind the surrounding principles as declared by the Supreme Court of the United States—the sidelights. A product may be a part of interstate commerce before it begins its actual physical journey therein. Where goods are purchased in one state for transportation to another, the purchase is interstate commerce quite as much as the transportation. *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, 42 S. Ct. 106, 66 L. Ed. 239. The buying and selling of goods for shipment beyond state lines is interstate commerce, notwithstanding that af-

ter the purchase some of the goods may be sold in local markets. *Lemke* v. *Farmers' Grain Co.*, 258 U. S. 50, 42 S. Ct. 244, 66 L. Ed. 458. The carrying of goods from one state to another, as the result of orders previously received from the originating state, is interstate commerce, and is not subject to license fees imposed by the state into which they are shipped. *Wagner* v. *Covington*, 251 U. S. 95, 40 S. Ct. 93, 64 L. Ed. 157. The buying of grain in one state for shipment to markets in another state, if followed by such shipment, is interstate commerce. *Shafer* v. *Farmers' Grain Co.*, 268 U. S. 189, 45 S. Ct. 481, 69 L. Ed. 909. The negotiation for the sale of goods which are in another state for the purpose of introducing them into the state in which the negotiation is made is interstate commerce. *Crenshaw* v. *Ark.*, 227 U. S. 389, 33 S. Ct. 294, 57 L. Ed. 565; *Weeks* v. *U. S.*, 245 U. S. 618, 38 S. Ct. 219, 62 L. Ed. 513. The sale and delivery of coal f. o. b. cars at the mine for transportation to purchasers in other states is interstate commerce. *Pa. R. Co.* v. *Sonman Shaft Coal Co.*, 242 U. S. 120, 37 Sup. Ct. 46, 61 L. Ed. 188. The right to solicit or take orders for interstate commerce business is a part of interstate commerce, and not subject to state regulation. *Vance* v. *W. A. Vandercook Co.*, 170 U. S. 438, 18 S. Ct. 674, 42 L. Ed. 1100. Where a commodity is a part of an actual constant and flowing stream out of a state from which the owner may draw part of it for use in the state before reaching the state border, a tax on the flow is a burden on interstate commerce which the state cannot impose. Such a flow in interstate commerce is a reasonable class of business. *Stafford* v. *Wallace*, 258 U. S. 495, 42 S. Ct. 397, 66 L. Ed. 735, 23 A. L. R. 229. A tax on flowing commerce does not become valid and constitutional because it applies to domestic commerce as well. *Crew-Levick Co.* v. *Pa.*, 245 U. S. 292, 38 S. Ct. 126, 62 L. Ed. 295. A person cannot be required to pay a state line tax for the mere privilege of carrying on interstate or foreign commerce. *City of Sault Ste. Marie* v. *International Transit Co.*, 234 U. S. 333, 34

S. Ct. 826, 58 L. Ed. 1337, 52 L. R. A. (N. S.) 574; *Crutcher* v. *Ky.*, 141 U. S. 47, 11 S. Ct. 851, 35 L. Ed. 649."

6. *Cotton Buyer's Connection with the Cotton Makes it a Part of Interstate Commerce Before Compression.*

The agreed facts show that the usual custom is that cotton buyers take from persons outside of the State an absolute contract to deliver to them certain cottons, and having so done they then go upon the market to fulfill, by purchase, that which they have sold short. Thereby that thus purchased becomes interstate commerce. *Sonneborn Bros.* v. *Keeling*, 262 U. S. 515, 67 L. Ed. 1100:

> "Many of the sales by the appellants were made by them before the oil to fulfill the sales were sent to Texas. * * * They were, in fact, contracts for the sale and delivery of oil across state lines. The soliciting of orders for such sales is equally exempt. Such transactions are interstate commerce in its essence and any state tax upon it is a regulation of it and void," citing cases.

Compression postdated this act, and postdating, it was had to make the cotton movement possible.

7. *Acts Preliminary and Convenient for, but not Absolutely Essential, to Interstate Commerce, Make This Movement Interstate.*

The Supreme Court of Mississippi held "the assembling of cotton in warehouse and its compression are acts preliminary, convenient for, but not absolutely essential to its transportation to other states or countries."

Thereasto, the decision of this Court is final and, with deference, the declaration that these are not absolutely essential for interstate commerce is true in the qualified sense that railroad transportation is not essential, but that the

movement therein may be made by ox-wagons, for under the agreed facts, the movement of three cars of uncompressed cotton in the place of one car of compressed cotton is such an economic loss as to make, from the viewpoint of commerce, the movement "absolutely essential." In short, convenience is a relative term, and so being, there must be available for interstate transportation those conveniences which render possible the movement at the minimum cost unobstructed by State authority. Compare *Southern Pacific Co.* v. *Calexico*, 288 Fed. 642; *Rodgers* v. *Matthews*, *supra*.

8. *Certain Cases Differentiated.*

The factual background in *Coe* v. *Errol*, 116 U. S. 517, 29 L. Ed. 715; *Diamond Match Co.* v. *Ontonagon*, 188 U. S. 81, 47 L. Ed. 394; *American Mfg. Co.* v. *St. Louis*, 250 U. S. 459, 63 L. Ed. 1084; *Crescent Oil Co.* v. *State of Miss.*, 257 U. S. 129, 66 L. Ed. 166, is radically different.

Counsel's citation of *Carson Petroleum Co.* v. *Vial*, 279 U. S. 94, 75 L. Ed. 626, with deference, is inappropriate, as its doctrines support that herein contended for. Confessedly as to 75 per cent of the cotton movement by rail, the journey was begun and was continued as from the initial point and the carrier paid for the compression to conserve its space. Suppose the State of Mississippi had prohibited absolutely cotton compression. Thereby it would have prevented commerce in cotton as now existing, the Court saying in *Southern Pacific Co.* v. *Calexico*, 288 Fed. 642:

> "To hold that it could not be compressed before shipment would be to hold in effect that it could not be shipped at all."

9. *General Oil Co.* v. *Crane*, 209 *U. S.* 212, 52 *L. Ed.* 754.

Chief Justice Taft adverted to this case in *Carson Petroleum Co.* v. *Vial*, 279 U. S. 105, remarking the Court was

divided and "there was very vigorous dissent. The case has caused discussion, and it must be admitted that it is a close one and might easily have been decided the other way. The result was probably affected by the impression created by the original situation and the same artificial rearrangement of tanks in a large entrepot for redistribution of oil to avoid previous taxation," and therein was remarked:

> "There has been a liberal construction of what is continuity of the journey in the cases where the Court finds from the circumstances that export trade has been actually intended and carried through, especially *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 478, 55 L. Ed. 310; *Texas & New Orleans Railroad Co.* v. *Sabine Tram Co.*, 227 U. S. 111, 57 L. Ed. 442."

And as declared in the Vial case, approved in the Blasius case:

> "The determining circumstance is that the shipment of the lumber to Sabine was but a step in its transportation to its real and ultimate destination in foreign countries. In other words, the essential character of the commerce, not its mere accidents, should determine. It was to supply the demand of foreign countries that the lumber was purchased, manufactured and shipped, and to give it various character by the steps in its transportation would be extremely artificial."

10. *Cases Further Distinguished.*

None of the cases relied upon by appellee contain the principle that the conditioning at the plant was essential and prerequisite to the continuance of that particular type of commerce under its original characteristics. Here cotton must be exported, more than 50 per cent thereof usually going abroad, and the placing of eight bands thereon is

requisite for conformity to marine requirements, and if the State could tax the preparation of the cotton for entering into export trade to such an extent as to prevent it from so doing, then thereby the authority thereover would be divided and not single as is under the decisions of this Court absolutely requisite.

The factual background in *Merchants Exchange* v. *Missouri*, 248 U. S. 365, 63 L. Ed. 300, is radically different from that here. Here the distinction as to *Hope Natural Gas Co.* v. *Hall*, 274 U. S. 284; *Oliver Iron Mining Co.* v. *Lord*, 262 U. S. 172, 67 L. Ed. 929; *Philadelphia, etc., Co.* v. *Commonwealth*, 82 U. S. 164; *Heisler* v. *Colliery Co.*, 260 U. S. 245, 67 L. Ed. 237; *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 163, 76 L. Ed. 1038, is that in each of them there was a separable element normally existent subordinate to State power and the exercise of that taxed was not a condition to the commercial consumption of the business sought to be taxed.

The other cases cited and relied upon by appellee, with deference, are not controlling.

As remarked by opposite counsel, under his contention, "The compressing of the cotton is the final step in preparing the bales of cotton to become a commodity of interstate commerce," but such preparation is made at the instance of the carrier for the benefit of the carrier under a rate fixed by the Interstate Commerce Commission for a service rendered at a property licensed by the United States Government under the National Warehouse Act, and which unless performed as performed, would, under the Mississippi decision, render the commerce inconvenient, to say the least of it, commercially impossible.

Counsel's conclusion is made plain at page 40, when he says:

> "Cotton does not require storage in a warehouse or compression by a compress of the character here in-

volved, as a necessary prerequisite to becoming an article of interstate or foreign commerce,"

but there is no showing that there is any other available instrumentality whereby it may so become at the present time, and here, compression must be had for carrier space conservation, and to deny the carrier the right thus to transport would be to require the movement of three cars of uncompressed cotton instead of one car of compressed cotton. The character of the commodity being so light in weight as to thus require compression before commercial transportation is reasonably practicable. Before compression (out of the record), cotton was transported in open cars piled high and subject to fire and other hazards. Now its transportation is in closed cars, free from the weather, wherefor density is a prime requisite.

As to counsel's point II, with deference, we reiterate the decisions and the reasons embodied in our brief without further thereto replying.

Respectfully,

MARCHMAN GREEN,
GARNER W. GREEN,
FORREST B. JACKSON,
Attorneys for Appellant.

INDEX

Page

Statement of the Case 1

Statement of Facts 2

Statutes in Controversy 7

Questions involved 8

(1) Whether or not Sections 3, 57 and 63 of Chapter 88, Laws of Mississippi 1930, imposing a privilege tax upon the operator of a cotton warehouse and compress, contravenes the provisions of Paragraph 3 of Section 8, Article 1, of the Constitution of the United States, as imposing a state tax upon interstate commerce 8

(2) Whether or not the operator of a cotton warehouse and compress, licensed under the provisions of the "United States Warehouse Act," the same being Chapter 10, Title 7 of U. S. C. A. is a federal instrumentality and thereby exempt from state taxation 8

Brief and Argument 8

1 and 2 8

Point I. The imposition of a state privilege tax upon the operator of a cotton warehouse and compress, for the privilege of storing and compressing cotton concentrated at Cleveland, Mississippi, does not violate Paragraph 3 of Section 8 of Article 1 of the Constitution of the United States, as imposing a state tax upon persons engaged in interstate commerce be-

cause the movement of cotton concentrated at Cleveland, Mississippi, in interstate commerce, does not begin until the storage and compress charges are paid, and the cotton is delivered to a carrier, for transportation, with a destination fixed at a point beyond the boundaries of the state of Mississippi 10

Point II. A cotton warehouse and compress licensed under the provisions of the "United States Warehouse Act" is not a federal instrumentality so as to be exempt from state taxation 31

APPENDIX "A" 43

APPENDIX "B" 45

CASES CITED

American Steel & Wire Co. v. Speed, 192 U. S. 532 40

American Mfg. Company v. St. Louis, 250 U. S. 459, 63 L. ed. 1084 14, 30

Broad River Power Company, Plaintiff, v. Walter G. Query, et al, 77 L. ed. 489 34

Browning v. Waycross, 233 U. S. 16, 58 L. ed. 828, 832 28

Brown v. Houston, 114 U. S. 522, 48 L. ed. 547 40

David Burnet, Commissioner of Internal Revenue v. A. T. Jergins Trust, 77 L. ed. 550 31

Cargill Co. v. State of Minnesota, et al, 180 U. S. 452 27

Carson Petroleum Company v. Vial, 279 U. S. 94, 75 L. ed. 626 16

Choctaw O & G RR Co. v. Mackey, 256 U. S. 53 32

Coe v. Errol, 116 U. S. 517, 29 L. ed. 715 11

Crescent Oil Company v. State of Mississippi, 257 U. S. 129, 66 L. ed. 166 15

Diamond Match Co. v. Village of Ontonagon, 188 U. S. 81, 47 L. ed. 394 12

Fox Film Corporation v. Doyal, 286 U. S. 123 32

General Oil Co. v. Cram, 209 U. S. 212, 52 L. ed. 754 17

Henderson Bridge Co. v. Kentucky, 166 U. S. 150, 41 L. ed. 953 33

Hope Natural Gas Co. v. Hall, State Tax Commissioner of West Virginia, et al, 274 U. S. 284, 71 L. ed 1049 19

Hump Hairpin Mfg. Co. v. Emmerson, 258 U. S. 294 66 L. ed. 622, 42 Sup. Ct. Rep. 305 29

Indian Territory Illuminating Oil Co. v. Board of Equalization of Tulsa County, Oklahoma, 77 L. ed. 501 31

Indian Territory Illuminating Oil Co. v. Board of County Commissioners, Payne County, Oklahoma, 77 L. ed. 501 31

Indian Motor Cycle Co. v. United States, 283 U. S. 270, 576, 579 31

International Shoe Co. v. Shartel, 279 U. S. 429, 433, 73 L. ed. 781, 785, 49 Sup. Ct. Rep. 380 30

Kansas City Ft. S. & M. R. Co. v. Kansas, 240 U. S. 227, 234, 60 L. ed. 617, 620, 36 Sup. Ct. Rep. 261 29

Kansas City M & B R. Co. v. Stiles, 242 U. S. 111, 119, 61 L. ed. 176, 187, 37 Sup. Ct. Rep. 58 29

Keokuk & H. Bridge Co. v. Illinois, 175 U. S. 626, 44 L. ed. 299. 33

Lawrence v. State Tax Commission, 286 U. S. 278, 76 L. ed. 1102 27

Lexington Water Power Company, Plaintiff, v. Walter G. Query, et al, 77 L. ed. 489 34

Maine v. Grand Trunk Co., 142 U. S. 217, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163 29

McCluskey v. Mayersville, 243 U. S. 36, 61 L. ed. 578 17

Merchants Exchange of St. Louis v. State of Missouri, on relation of John T. Baker, Attorney-General, 248 U. S. 365, 63 L. ed. 300 ..... 18, 30

Munn, et al, v. People of the State of Illinois, 94 U. S. 113, 24 L. ed. 77 26

Oliver Iron Mining Company v. Lord, 262 U. S. 172, 67 L. ed. 929 20

Philadelphia & Reading Railroad Co. v. Commonwealth of Pennsylvania, 82 U. S. 164 21

Rowlan C. Heisler v. Thomas Colliery Co. et al, 260 U. S. 245, 67 L. ed. 237 22

Railroad Co. v. Pennston, 18 Wall. 5 32

St. Louis-San Francisco R. Co. v. Middlekamp, 256 U. S. 226, 231, 65 L. ed. 905, 913, 41 Sup. Ct. Rep. 121, 480 ..... 29, 33

Superior Oil Co. v. Miss. ex rel, Knox, 280 U. S. 393 28

Susquehanna Power Co. v. Tax Commission, 283 U. S. 291, 75 L. ed. 1042 32

Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113, 120, 65 L. ed. 165, 169, 41 Sup. Ct. Rep. 45 29

United States Glue Co. v. Oak Creek, 247 U. S. 321, 326, 62 L. ed. 1135, 1140, 38 Sup. Ct. Rep. 499, Ann. Cas. 198E 748 29

Utah Power & Light Co. v. Pfost, 286 U. S. 165 24

Utah Power & Light Co. v. Pfost, 286 U. S. 163 32

Western Union Telegraph Co. v Gottlieb, 190 U. S. 412 33

Western Union Telegraph Co. v. Mass., 125 U. S. 530 33

Willcutts v. Bunn, 282 U. S. 216 32

Williams v. Talladega, 226 U. S. 404 33

Wisconsin & M. R. Co. v. Power, 191 U. S. 379, 48 L. ed. 229, 24 Sup. Ct. Rep. 107 29

Wm. E. Peck & Co. v. Lowe, 247 U. S. 165, 173-175, 62 L. ed. 1049, 1051, 1052, 38 Sup. Ct. Rep. 432 29

Woodruff v. Parham, 8 Wall. 123, 19 L. ed. 382 40

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No. 166

FEDERAL COMPRESS AND WAREHOUSE COMPANY, ET AL.,

Appellants,

VS.

E. R. McLEAN, Sheriff and Tax Collector,

Appellee.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE

The Federal Compress and Warehouse Company, a corporation, organized under the laws of the State of Delaware, and with a place of business at Cleveland, in Bolivar County, Mississippi, paid under protest to the sheriff and tax collector of Bolivar County, Mississippi, privilege tax imposed by Sections 57 and 63 of Chapter 88 of the General Laws of Mississippi 1930, and thereafter, filed suit against the said sheriff and tax collector in the Circuit Court of the First District of Bolivar County, Mississippi, to recover the amount of the tax paid upon the grounds: (1) that it was an instrumentality engaged in interstate commerce and was thereby exempt from state taxation, and (2) that the statutes imposed a direct tax

upon it as an instrumentality of the federal government.

The case was submitted to the court on an agreed statement of facts, and resulted in a judgment in favor of the sheriff and tax collector. Upon an appeal to the Supreme Court of Mississippi, the judgment of the trial court was affirmed; whereupon, the Federal Compress and Warehouse Company prosecutes an appeal to this Court.

STATEMENT OF FACTS.

The facts as disclosed by the record are as follows:

The appellant, the Federal Compress and Warehouse Company, is a corporation, chartered under the laws of the State of Delaware, with its principal place of business at Memphis, Tennessee, and operating cotton warehouses and compresses in the State of Mississippi.

Appellee, E. R. McLean, is the sheriff and tax collector of Bolivar County, Mississippi.

Cotton is the great cash crop of Mississippi farmers, and when ripened in the field is picked by hand, put through ginneries, where the lint is removed from the seed and the lint cotton wrapped and tied into bales, weighing approximately 500 pounds each, and which said bales are approximately five feet in length, three and one-half feet in width and four and one-half feet in height.

That at Cleveland, Mississippi, there exists a market for the purchase and sale of cotton between farmers and cotton brokers and others engaged in like business. Said

cotton brokers and others engaged in such business purchase cotton for the purpose of selling same in interstate commerce. The price at which cotton is sold upon the market at Cleveland is determined by the value of such cotton based upon the grade, staple and conditions as valued by certain cotton exchanges in the city of New Orleans, Chicago and New York. Quotations are received for approximately five hours each day by wire which fixes the price at which cotton is sold upon the market at Cleveland, Mississippi. At this point there are approximately twenty-five buyers and shippers who are engaged solely in the business of buying, selling and shipping cotton in interstate and foreign commerce.

The general course of business among cotton buyers, sellers and shippers at Cleveland, Mississippi, is that a buyer enters into a contract for either the immediate or future delivery of a certain number of bales of cotton of a specified class, grade and staple obligating himself to deliver to a mill in a foreign state or country, a certain number of bales of cotton at a certain or given price, whereupon such buyer will go upon the market at Cleveland and purchase cotton of the kind and character which he has obligated himself to deliver and will cause delivery under the terms of his contract. Not exceeding ten per cent of the cotton purchased by shippers is bought when no contract for sale thereof exists, but in all instances it is bought with the sole intention of procuring a sale in some foreign market and with the intention of causing the same to be transported in interstate commerce. In the purchase of such cotton, there is from one to ten per cent of same that is not fit for interstate sale and shipment, which said cotton is sold locally.

The appellant operates a cotton warehouse and compress at Cleveland, Bolivar County, Mississippi, and has with reference to the operation of its cotton warehouse and compress complied with all of the terms and provisions of the Act of Congress of the United States known as the "United States Warehouse Act," the same being Chapter 10, Title 7, U. S. C. A. That the capacity of the warehouse is more than 20,000 bales and less than 35,000 bales; that the amount of cotton compressed by appellant at this point is more than 30,000 bales and less than 40,000 bales per annum.

The compress is a combination storage and plant equipped with machinery designed for the compression of bales of cotton for the purpose of reducing its size. After the cotton is compressed, there may be loaded into cars and ships, for carriage, approximately three times as much cotton after compression as otherwise would be possible without compression.

Approximately twenty-five per cent of the cotton which is bought and sold upon the market at Cleveland, and stored and compressed by appellant, is transported to the compress and warehouse by automobile trucks or wagons and delivered by that means to such compress and warehouse. Approximately seventy-five per cent of such cotton stored and compressed in appellant's warehouse and compress at Cleveland is transported to said compress by rail over the Yazoo and Mississippi Valley Railroad Company, a common carrier, engaged in interstate commerce.

When cotton is delivered to the appellant at its ware-

house and compress, it issues to the owner of such cotton a warehouse receipt, which receipt complies with all of the terms and provisions of the "United States Warehouse Act." The cotton is sampled and sold by the owner thereof on the basis of quality disclosed by the sample and by endorsement and delivery of the warehouse receipts evidencing the ownership of same, the price being governed by the markets in New Orleans, Chicago and New York.

Cotton is concentrated and stored in the appellant's warehouse and compress for the purpose of compression and for the purpose of awaiting the determination of its final point of destination outside of the State of Mississippi. When the destination of such cotton is determined, and after having the same compressed and receiving shipping orders, and having the warehouse receipt surrendered by the owner, and the compression charges paid by the carrier, appellant then loads same out. The carrier charges the through rate from the point of origin to the point of destination outside of the State of Mississippi, instead of charging the combined rate for carriage as intrastate commerce from the point of origin to Cleveland, plus the charge for carriage in interstate commerce from Cleveland to point of destination outside the state. The carriage charges are made by said carriers in accordance with the regulations prescribed by the Interstate Commerce Commission in pursuance of the Act of Congress creating said Commission.

By an agreement entered into between the Yazoo and Mississippi Valley Railroad Company and the appellant, the Federal Compress and Warehouse Company, dated the 1st

day of February, 1930, the Federal Compress and Warehouse Company is made the Limited Agent of the Railroad Company, for the purpose of receiving cotton from the railroad company, delivering cotton to the railroad, loading and unloading cotton from and into the cars of said Railroad Company, making proper delivery of cotton in the custody of said Compress Company, insofar as concerns the interest of the Railroad Company. When cotton has been placed in the appellant's warehouse and compress, it there remains until the owner of such cotton desires to have it shipped, when such owner delivers a shipper's order and surrenders the warehouse receipts, evidencing the ownership of such cotton. The identity of each bale of cotton is not preserved in reshipping and substitution is permitted with the understanding that the integrity of the through rate from the original shipping point to ultimate destination is preserved.

The charge of the appellant, the Federal Compress and Warehouse Company, for compressing the cotton, namely, fifteen cents per hundredweight is paid by the carrier.

No cotton is compressed by the appellant until it is ready to move out of the warehouse by rail and only ten bales of cotton during the last five years has moved from said compress, without compression, to a mill in Mississippi.

It is further shown that the Federal Compress and Warehouse Company does not buy or sell cotton or own any interest in same; that when cotton is shipped out of the warehouse, bills of lading therefor are not issued to the

appellant, but to the owners of such cotton as evidenced by the ownership of warehouse receipts; that the movement of cotton out of the warehouse is directed by the owner of same as evidenced by the owner of warehouse receipts; that the appellant does not own or operate, directly or indirectly, any facilities for the transportation of cotton from its warehouse at Cleveland, Mississippi, to points within or without the boundaries of the State of Mississippi, and is not a common carrier for hire or otherwise.

It is further shown in the record that appellant paid, under protest, the amount of privilege taxes sued for as a right or privilege to operate its warehouse and compress. That the warehouse and compress are taxed separately by the laws of the State of Mississippi, that is to say; the privilege to operate the warehouse is taxed separately from the right to operate the compress, and by separate, distinct and different sections of the Privilege Tax Statute.

STATUTES IN CONTROVERSY

Chapter 88 of the General Laws of Mississippi, 1930, levies a privilege tax on various trades, professions, callings and businesses. The statute contains 246 sections. The sections of the statute necessary for a determination of the questions involved in this lawsuit are Sections 3, 57, 63 and 242. The sections in question will be found set out in full in Appendix "A" of this brief.

The "United States Warehouse Act" the same being Chapter 10, Title 7 of United States Code Annotated, Act August 11, 1916 C. 313, 39 Stat. L. 486, and amendments thereto.

QUESTIONS INVOLVED

1. Whether or not Sections 3, 57 and 63 of Chapter 88, Laws of Mississippi 1930, imposing a privilege tax upon the operator of a cotton warehouse and compress, contravenes the provision of Paragraph 3 of Section 8, Article 1, of the Constitution of the United States, as imposing a state tax upon interstate commerce.

2. Whether or not the operator of a cotton warehouse and compress, licensed under the provisions of the "United States Warehouse Act," the same being Chapter 10, Title 7 of U. S. C. A. is a federal instrumentality and thereby exempt from state taxation.

BRIEF AND ARGUMENT

It is contended by appellant that it is not liable for the payment of the privilege tax imposed by the statutes of the State of Mississippi, for the privilege of operating a cotton warehouse and compress at Cleveland, Mississippi, for the following reasons:

1. Because, it says, it is engaged in interstate commerce, and the privilege tax imposed by the State of Mississippi is a direct tax and burden upon an instrumentality of interstate commerce in violation of Paragraph 3 of Section 8 of Article 1 of the Constitution of the United States, granting to Congress the power to regulate commerce among the several states.

2. That the statutes levy and impose a direct tax up-

on the activities of an instrumentality of the Federal government.

With the contention of appellant thus stated, it first appears to be necessary to determine when a commodity is in the channels of interstate commerce. If the appellant's compress and warehouse is a part of the channel of interstate commerce through which cotton concentrated at Cleveland, Mississippi, passes as a commodity of interstate commerce, then of course, it is an instrumentality of interstate commerce and it is without the power of the state to impose a privilege tax upon it for the privilege of storing and compressing cotton, but if on the other hand the compress and warehouse is no part of the channel of interstate commerce through which cotton concentrated at Cleveland, Mississippi, passes, after it enters the channels of interstate commerce, then it is within the power of the state to impose the privilege tax paid by appellant and here sued for, and no constitutional right of appellant has been transgressed by the exaction.

In order to determine whether or not the appellant's warehouse and compress is a part of the channel of interstate commerce, it is necessary to ascertain when, in point of time, a commodity enters the channel of interstate commerce. In doing this, we must keep in mind that the appellant is a private corporation operated at its pleasure and for its own individual profit; that it does not buy or sell cotton; that the movement of cotton into and out of the warehouse and compress is directed by the owner of such cotton; that appellant has no facilities nor does it operate any facilities for transportation of cotton from its ware-

house at Cleveland, Mississippi, to points within or without the State of Mississippi, and it is not a common carrier of property for hire.

Counsel for appellant segregate and discuss the tax liability on the compress and warehouse separately. If the tax on either is forbidden, by the Federal Constitution, both are, therefore we shall discuss both under point Number One in this brief.

POINT NO. I.

THE IMPOSITION OF A STATE PRIVILEGE TAX UPON THE OPERATOR OF A COTTON WAREHOUSE AND COMPRESS, FOR THE PRIVILEGE OF STORING AND COMPRESSING COTTON CONCENTRATED AT CLEVELAND, MISSISSIPPI, DOES NOT VIOLATE PARAGRAPH 3 OF SECTION 8 OF ARTICLE 1 OF THE CONSTITUTION OF THE UNITED STATES, AS IMPOSING A STATE TAX UPON AN INSTRUMENTALITY ENGAGED IN INTERSTATE COMMERCE BECAUSE THE MOVEMENT OF COTTON CONCENTRATED AT CLEVELAND, MISSISSIPPI, IN INTERSTATE COMMERCE, DOES NOT BEGIN UNTIL THE STORAGE AND COMPRESS CHARGES ARE PAID, AND THE COTTON IS DELIVERED TO A CARRIER, FOR TRANSPORTATION, WITH A DESTINATION FIXED AT A POINT BEYOND THE BOUNDARIES OF THE STATE OF MISSISSIPPI.

Until cotton, concentrated at Cleveland, Mississippi, is actually loaded or committed to a common carrier for transportation to another state, it cannot be in interstate

commerce and therefore, not in the hands of an instrumentality of interstate commerce as a part of the channel of interstate commerce. All of the authorities seem to agree with this proposition.

In *Coe v. Errol*, 116 U. S. 517, 29 L. ed. 715, logs cut in the state of Maine, and others cut in the state of New Hampshire, were floated, in course of transit, down a stream in New Hampshire to the town of Errol in the latter state, thence to be floated down another stream or river into the state of Maine. The town of Errol assessed upon the property a county, town, school and highway tax. The tax was sustained by the Supreme Court of the State of New Hampshire as to the logs cut in that state, and abated as to those cut in Maine. The judgment was affirmed by the Supreme Court of the United States. In disposing of the question, Mr. Justice Bradley used the following language:

> "When the products of the farm or forest are collected and brought in from the surrounding county to a town or station serving as an entrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the state to the state of their destination or have started on their ultimate passage to that stage.* * * *
>
> "That such goods do not cease to be part of the general mass of property in the state, subject to such, to its jurisdiction and to taxation in the usual way, until they have been shipped or entered with a common carrier for transportation to

another state or have been started upon such transportation in a continuous route or journey. * * * *. It was said in the case of *The Daniel Ball*, 10 Wall. 565 (77 U. S. bk. 19, L. ed. 1002): 'Whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced.'

"But this movement does not begin until the articles have been shipped or started for transportation from one state to the other. The carrying of them in carts or other vehicles or even floating them to the depot where the journey is to commence is no part of that journey. That is all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another state, or committed to a common carrier for transportation to such state, its destination is not fixed and certain. It may be sold or otherwise disposed of within the state, and never put in course of transportation out of the state. Carrying it from the farm or the forest to the depot is only an interior movement of the property, entirely within the state, for that purpose, it is true, but only for the purpose of putting it into a course of exportation; it is no part of the exportation itself. Until shipped or started on its final journey out of the state its exportation is a matter altogether in fieri, and not at all a fixed and certain thing."

In *Diamond Match Company v. Village of Ontonagon*, 188 U. S. 81, 47 L. ed. 394, a bill in equity was filed to restrain the collection of a tax levied under the laws of the

State of Michigan. The complainant was a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in the City of Chicago in said state. It was the owner of a large quantity of pine wood, timber, etc., in Octonagon and other counties in the State of Michigan. It also owned saw mills located at Ontonagon, Michigan, and at Green Bay, Wisconsin, logs were cut from the forest or floated down the Ontonagon River to its mills at Ontonagon to be manufactured into lumber. In August, 1896, complainant's mills at Ontonagon burned; whereupon, the logs were transported by railroad to Green Bay, Wisconsin, to complainant's mill there located. The complainant contended that the property was in course of transportation in interstate commerce and that the Village of Ontonagon had no authority to levy the tax.

The court in deciding the case quoted with approval from the opinion of *Coe v. Errol*, supra, and in addition, said:

> "Whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced. But this movement does not begin until the articles have been shipped or started for transportation from the one state to the other. The carrying of them in carts or other vehicles, or even floating them, to the depot where the journey is to commence, is no part of that journey. * * * *.
>
> "In further specialization of these propositions we may say that the cases establish that there may be an interior movement of property

> which does not constitute interstate commerce, though property come from or be destined to another state. In the one case, though it has not reached its place of disembarkation or delivery it may be taxed. 114 U. S. 622, 29 L. ed. 257, 5 Supr. Ct. Rep. 1091. In the other case, until it be shipped or started on its final journey it may be taxed. 116 U. S. 517, 29 L. ed. 715, 6 Sup. Ct. Rep. 475."

In *American Manufacturing Company v. St. Louis*, 250 U. S. 459, 63 L. ed. 1084, a statute of the state of Missouri authorized cities to license, tax and regulate manufacturers. In pursuance to this authority, by the ordinance brought in question, in addition to an ad valorem tax, required every manufacturer before doing business to take out a license and thereafter pay a license tax of One Dollar on each $1,000.00 of sales made. A suit was brought in the state court to recover the amount of the tax paid, under the ordinance measured by the amount of sales of goods manufactured in the city and afterwards removed to storage warehouses outside of the state and later sold in other states than Missouri. A judgment at first was given in favor of plaintiff but being reversed by the State Supreme Court, a new trial resulted in favor of the city.

In construing the statute and defining the nature of the tax the State Supreme Court of Missouri, in 198 S. W. 1183, used the following language:

> "We hold that the tax in question is a tax upon the privilege of pursuing the business of manufacturing these goods in the City of St. Louis; * * *."

In affirming the case the Supreme Court of the United States quoted from the opinion of the Supreme Court of Missouri, and further approved the validity of the tax by saying:

> "In our opinion the operation and effect of the taxing ordinance are to impose a legitimate burden upon the business of carrying on the manufacture of goods in the city; it produces no direct burden on commerce in the goods manufactured, whether domestic or interstate, and only the same kind of incidental and indirect effect as that which results from the payment of property taxes or any other and general contribution to the cost of government. Therefore, it does not amount to a regulation of interstate commerce. * * *." 250 U. S. 459, 63 L. ed. 1084.

In *Crescent Cotton Oil Company v. State of Mississippi*, 257 U. S. 129, 66 L. ed. 166, it was held that a non-resident corporation operating a cotton seed oil mill in its home state and cotton gins in Mississippi, and shipping out of Mississippi for use in its oil mills in another state, all of the cotton seed which it purchased in connection with it's ginning operations did not make it, by reason of such operation, an instrumentality of interstate commerce, so as to invalidate Mississippi's "anti gin" statute prohibiting any corporation from owning gins where such corporations were interested in the manufacture of cotton seed oil or cotton seed meal. In delivering the opinion, the court said:

> "When the ginning is completed, the operator of the gin is free to purchase the seed or not; and, if it is purchased, to store it in Mississippi indefinitely, or to sell or use it in that state, or

to ship it out of the state for use in another; and, under the cases cited, it is only in this last case, and after the seed has been committed to a carrier for interstate transport, that it passes from the regulatory power of the state into interstate commerce and under the national power."

In *Carson Petroleum Co. v. Vial*, 279 U. S. 94, 75 L. ed. 626, the Supreme Court held as follows:

"'The conclusion in cases like this must be determined from the various circumstances. Mere intention by the owner to send the logs out of the state does not put them in interstate commerce, nor does preparatory gathering for that purpose, at a depot. It must appear that the movement for another state has actually begun and is going on. Solution is easy when the shipment has been delivered to a carrier for a destination in another state."

The court in discussing when a commodity is in the channels of interstate commerce, said further:

"An instance of interruptions of railroad transportation is *Bacon v. Illinois*, 227 U. S. 504, 57 L. ed. 615, 33 Sup. Ct. Rep. 299. Bacon, the owner of the grain, and the taxpayer, had bought it in the South and had secured the right from the railroads transporting it to remove it from their custody to his private grain elevator in Illinois where for his own purpose he proceeded to inspect, weigh, clean, clip, dry, sack, grade, or mix it, and had power under his contract with the carriers either to change its ownership, consignee or destination or to restore the grain, after the processes mentioned, to the carrier to be deliv-

> ered at the destination in another state according to his original intention. The question was whether the removal of the grain to his private elevator interrupted the continuity of the transportation and made the grain subject to local taxation there. It was held that it did; that the grain was locally dealt with in the interest of the owner while it was in his custody and was subject to his complete disposition for a collateral business purpose of his own."

Therefore, the point of time when a commodity enters the channels of interstate commerce, is the time when an article of commerce is committed to the carrier for transportation to the state of its ultimate destination.

In *McCluskey v. Mayersville*, 243 U. S. 36, 61 L. ed. 578, the court used the following words:

> "The begining of the transit which constitutes interstate commerce 'is defined in *Coe v. Errol* to be the point of time that an article is committed to a carrier for transportation to the state of its destination, or started on its ultimate passage."

In *General Oil Company vs. Crain*, 209 U. S. 212, 52 L. ed. 754, it was held that oil shipped from Pennsylvania and destined ultimately for points in Arkansas, Louisiana and Mississippi, is not property in interstate commerce, so as to be exempt from State taxation or inspection laws while it is held at a distributing point maintained by the shippers in Tennessee, at which point such oil is unloaded from tank cars into various tanks, barrels, and other re-

ceptacles and from which it is forwarded to its final destination. The court said:

> "Property, therefore, at an intermediate point between the places of shipment and ultimate destination, may cease to be a subject of interstate commerce. Necessarily, however, the lengh and purpose of the interruption of transit must be considered. * * * *
>
> "We have considered this case so far in view of the cases which involve the power of taxation. It may be that such power is more limited than the power to enact inspection laws. *Patapsco Guano Co. v. Board of Agriculture*, 171 U. S. 356, 43 L. ed. 195; 18 Sup. Ct. Rep. 862. The difference, if any exists, it is not necessary to observe. The cases based on the taxing power show the contentions of plaintiff in error are without merit; in other words, show that its oil was not property in interstate commerce."

In *Merchants Exchange of St. Louis v. State of Missouri on the Relation of John T. Barker, Attorney General*, 248 U. S. 365, 63 L. ed. 300, the Supreme Court held that a statute of Missouri providing that in cities having more than 75,000 inhabitants, buildings used for the storage of grain be deemed public warehouses, and prohibiting the issuance of weight certificates by other than authorized, bonded state weighers, did not violate the Constitution of the United States. The court said:

> "Section 63 does not violate the commerce clause of the Constitution. The contention that it does was rested below solely on the ground that the prohibition, as applied to grain received from

or shipped to points without the state, burdens interstate commerce. It clearly does not. *Pittsburg & S. Coal Co. v. Louisiana,* 156 U. S. 590, 39 L. ed. 544, 5 Inters. Com Rep. 18, 15 Sup. Ct. Rep. 459; *W. W. Cargill Co. v. Minnesota,* 180 U. S. 452, 45 L. ed. 619, 21 Sup. Ct. Rep. 423. But the additional contention is made here that all state regulation of the weighing of grain was superseded by the United States Grain Standards Act, approved August 11, 1916 (39 Stat. at L. 482, chap. 313.) That act (which is part B of Chapter 313) relates exclusively to the establishment by the Secretary of Agriculture of standards of quality and condition. It does not in any way refer to the weighing of grain. And part B of chapter 313 by Sec. 7 (p. 484), like part C, the United States Warehouse Act (which does contain some reference to weighing), by Section 29 (p. 490), makes manifest the purpose of Congress not to supersede state laws for the inspection and weighing of grain, but to co-operate with state officials charged with the enforcement of such state laws. The Missouri act is not superseded by or in conflict with the Federal Legislation."

In *Hope Natural Gas Company v. Hall, State Tax Commissioner of West Virginia, et al,* 274 U. S. 284, 71 L. ed. 1049, the Supreme Court upheld a statute of the State of West Virginia levying an occupation tax on persons engaged in producing for sale natural gas. The Gas Company was engaged in producing natural gas in West Virginia and was transporting it directly from the well to another state where it was sold. The Supreme Court held that the statute did not violate the Federal Constitution.

In *Oliver Iron Mining Company v. Lord*, 262 U.S. 172, 67 L. ed. 929, the statute of Minnesota levied a tax upon each person "engaged in the business of producing iron ore or other ores." The plaintiff was engaged in mining ore and loading it on cars and shipping it in interstate commerce. The statute was upheld and in so doing the court said:

> "We shall therefore treat the tax as an occupation tax in dealing with the contentions presented.
>
> "The chief contention is that mining, as conducted by the plaintiffs, if not actually a part of interstate commerce, is so closely connected therewith that to tax it is to burden or interfere with such commerce, which a state cannot do consistently with the commerce clause of the Constitution of the United States.
>
> "The facts on which the contention rests are as follows: The demand or market within the state for iron ore covers only a negligible percentage of what is mined by the plaintiffs. Practically all of their output is mined to fill existing contracts with consumers outside the state and passes at once into the channels of interstate commerce. Three-fourths of it is from open-pit mines and one-fourth from underground mines. At the open-pit mines, empty cars are run from adjacent railroad yards into the mines and there loaded. Steam shovels sever the ore from its natural bed and lift it directly into the cars. When loaded the cars are promptly returned to the railroad yards, where they are put into the trains which start the ore on its interstate journey. The

several steps follow in such succession that there is practically continuity of movement from the time the ore is severed from its natural bed. The operations within the mine and the movement of the cars into and out of the mine are conducted by the plaintiffs. The subsequent transportation is by public carriers. At the underground mines the plaintiffs dig the ore, bring it to the surface through shafts, and put it in elevated pockets where it readily can be loaded into the cars. The subsequent movements are much the same as at the open-pit mines, but their continuity is not so pronounced. Some of the ore from both kinds of mines—between 10 and 20 per cent—is concentrated by washing or beneficiated after coming out of the mine and before starting out of the state; but our conclusion respecting the usual operations renders this deflection immaterial. * * * *

"The ore does not enter interstate commerce until after the mining is done, and the tax is imposed only in respect of the mining. No discrimination against interstate commerce is involved. The tax may indirectly and incidentally affect such commerce, just as any taxation of railroad and telegraph lines does, but this is not a forbidden burden or interference."

In *Philadeuphia and Reading Railroad Co. v. Commonwealth of Pennsylvania*, 82 U. S. 164, the Court held as follows:

"No doubt every tax upon personal property or upon occupations, business or franchises, affects more or less the subjects and the operations of commerce. Yet it is not everything that af-

fects commerce that amounts to a regulation of it, within the meaning of the Constitution. * * *

"The tax is laid upon the gross receipts of the Company; laid upon a fund which has become the property of the Company, mingled with its other property, and possibly expended in improvements or put out at interest. The statute does not look beyond the corporation to those who may have contributed to its treasury."

We have already stated in the *Natural Gas Company* and *Oliver Iron Mining Company* cases, supra, it appears that the plaintiffs bought the gas and coal before it was produced, and that they bought it for the purpose of selling it in interstate commerce, and did so sell it. However, the court held squarely that the mining of the coal and the production of the gas was not interstate commerce and upheld the constitutionality of the statutes imposing an occupation tax on the gas company and the coal company.

Rowland C. Heisler v. Thomas Colliery Co., et al, 260 U. S. 245, 67 L. ed. 237, was presented on a writ of error to the Supreme Court of the State of Pennsylvania to review a judgment affirming a judgment of the Court of Common Pleas, dismissing a suit brought to enjoin the enforcement and payment of a tax on anthracite coal.

In 1921 the commonwealth passed an Act providing that from and after its passage, each ton of anthracite coal mined, washed or screened, or otherwise prepared for market in the commonwealth, should be subject to a tax of one and one-half per cent of the value thereof, when prepared for market. The bill filed by plaintiff in error asasiled the

Act of 1921 as being offensive to the Fourteenth Amendment to the Constitution of the United States, also the right of the State to impose the tax, as being a regulation of interstate commerce, protected by the commerce clause of the Federal Constitution.

In disposing of the case with reference to whether or not said statute violated the interstate commerce clause of the Federal Constitution the court said:

> "We may, therefore, disregard the adventitious considerations referred to and their confusion, and, by doing so, we can estimate the contention made. It is that the products of a state that have, or are destined to have, a market in other states, are subpects of interstate commerce, though they have not moved from the place of their production or preparation.
>
> "The reach and consequence of the contention repel its acceptance. If the possibility, or, indeed, certainty, of exportation of a product or article from a state, it would seem to follow that it is in such commerce from the instant of its growth or production; and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries; it would nationalize and withdraw from state jurisdiction and deliver to Federal commercial controil the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts, and the woolen industries of other states at the very inception of their production or growth; that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet un-

shorn, and coal yet unmined, because they are, in varying percentages, destined for and surely to be exported to states other than those of their production.

"Other cases have decided the same and afford illustrations of it. *Cornell v. Coyne*, 192 U. S. 418, 48 L. ed. 504, 24 Sup. Ct. Rep. 383; *Susquehanna Coal Co. v. South Amboy*, 228 U. S. 665, 57 L. ed. 1015, 33 Sup. Ct. Rep. 712; *Bacon v. Illinois*, 227 U. S. 504, 57 L. ed. 615, 33 Sup. Ct. R. 299; *General Oil Co. v. Crain*, 209 U. S. 211, 52 L. ed. 754, 28 Sup. Ct. Rep. 475; *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, 66 L. ed. 975, 42 Sup. Ct. Rep. 570."

In the case of *Utah Power & Light Co. v. Pfost*, 286 U. S. 163, 76 L. ed. 1038, Mr. Justice Sutherland delivering the opinion of the court, said:

"It is apparent that in the last analysis the question we are called upon to solve is this: Upon the facts of the present case is the generation of electrical energy, like manufacture or production generally, a process essentially local in character and complete in itself; or is it so linked with the transmission as to make it an inseperable part of a transaction in interstate commerce? From the strictly scientific point of view the subject is highly technical, but in considering the case, we must not lose sight of the fact that taxation is a practical matter and that what consitutes commerce, manufacure or production is to be determined upon practical consideration."

We submit that the act of compression is only a further step in the preparation of cotton to enter the channels

of interstate commerce, so that same can be transported more economically as a commodity of interstate commerce, by the carrier.

The position of appellant, when followed to its ultimate conclusion, would make every farmer, who loads a bale of seed cotton on his wagon or truck in his field, to haul it to a gin for the purpose of separating the seed from the lint, engaged in interstate commerce, and his wagon and team or truck would be an instrumentality of interstate commerce, exempt from the imposition of a state tax. The same would be true of a person operating a cotton gin. We do not think that counsel for appellant would for one moment contend that a farmer hauling his cotton to the gin, and a ginnery engaged in separating the seed from the lint are engaged in intertsate commerce.

When viewing the facts in this record, there can be only two possible purposes for placing cotton in the warehouse and compress:

> First: It is placed in a warehouse as a place of storage until a market can be procured, and to obtain a warehouse receipt so that the owner thereof may sell same by delivery of the warehouse receipts and without actual delivery of the cotton.
>
> Second: That the cotton may be compressed so as to permit more bales of cotton to be put into a car or ship when it starts on its journey in interstate commerce.

The fact that cotton stored in a warehouse is to be shipped out of the state, does not make a statute requiring

a license for conducting the business of storing cotton in the state, amount to a regulation of interstate commerce.

In *Munn, et al v. People of State of Illinois*, 94 U. S. 113, 24 L. ed. 77, this court held that the limitations on the legislative power of the state imposed by the Constitution of the United States, did not apply to a state statute fixing the maximum of charges for storage of grain in warehouses at Chicago and other places in the state. In this case, the court said:

> "The warehouses of these plaintiffs in error are situated and their business carried on exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in State as well as those engaged in interstate commerce, but the yare no more necessarily a part of commerce itself than the dray or cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally they may become connected with interstate commerce, but not necessarily so. Their regulation is a thing of domestic concern and, certainly until Congress acts in reference to their interstate relations, the State may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction. We do not say that a case may not arise in which it will be found that a State, under the form of regulating its own affairs, has encroached upon the exclusive domain of Congress in respect to interstate commerce, but we do say that, upon the facts as they are represented to us in this record, that has not been done."

In *W. W. Cargill Co. v. State of Minnesota, et al,* 180 U. S. 452, the Supreme Court of the United States held that a state statute requiring a license for conducting the business of storing grain in an elevator to be shipped out of the state did not amount to a regulation of interstate commerce. In disposing of the question, the court used the following language:

> "It is also contended that the requirement of a license from the defendant company is inconsistent with the power of Congress to regulate commerce among the states. This view cannot be accepted. The statute puts no obstacle in the way of the purchase by the defendant company of grain in the state or the shipment out of the state of such grain as it purchased. The license has reference only to the business of the defendant at its elevator and warehouse. The statute only requires a license in respect of business conducted at an established warehouse in the state between the defendant and the sellers of grain. We do not perceive that in so doing the state has intrenched upon the domain of Federal authority, or regulated or sought to regulate interstate commerce. In no real or substantial sense is such commerce obstructed by the requirement of a license."

In the case of *Lawrence v. State Tax Commission,* 286 U. S. 276, 76 L. ed. 1102, the Supreme Court held that the federal Constitution, apart from the specific grant to the federal government of the exclusive power to levy certain limited classes of taxes, and to regulate interstate and foreign commerce, leaves states unrestricted in their power to tax those domiciled within them, so long as the tax imposed is upon property or on privileges enjoyed

there. While it is true that this case did not involve a privilege tax, however, the principle that the state can levy taxes on privileges enjoyed therein is applicable to the tax in this case.

The contract entered into between the appellants and the Yazoo and Mississippi Valley Railroad Company dated February 1st, 1930, whereby the appellant became the limited agent of the Railroad Company for the purpose of receiving cotton from the Railroad Company, delivering cotton to the Railroad Company, loading and unloading cotton from and into the cars of the Railroad Company, and making proper delivery of the cotton in the custody of the Compress Company, so far as concerns the interests of the Railroad Company, was not sufficient to make the Federal Compress and Warehouse Company an instrumentality engaged in interstate commerce, for it is "not within the power of the parties, by the form of their contract, to convert what was exclusively a local business into an interstate commerce business protected by the commerce clause" of the federal Constitution.

Superior Oil Co. v. Mississippi, Ex Rel, Knox, 280 U. S. 393;

Browning v. Waycross, 233 U. S. 16, 58 L. ed. 828, 832.

The amount of the tax imposed by the Mississippi statute upon the operator of a compress or a warehouse, as the case may be, is based or measured by the amount of business done within the state in one year; that is to say, upon the number of bales of cotton stored or compressed, as the

case may be. That does not impose any burden, directly or indirectly, upon interstate commerce.

Hump Hairpin Mfg. Co. v. Emmerson, 258 U. S. 294, 66 L. ed. 622, 42 Sup. Ct. Rep. 305;

Underwood Typewriter Co. v. Chamberlain, 254 U. S. 113, 120, 65 L. ed. 165, 169, 41 Sup. Ct. Rep. 45;

United States Glue Co. v. Oak Creek, 247 U. S. 321, 326, 62 L. ed. 1135, 1140, 38 Sup. Ct. Rep. 499, Ann. Cas. 198E 748;

William E. Peck & Co. v. Lowe, 247 U. S. 165, 173-175, 62 L. ed. 1049, 1051, 1052, 38 Sup. Ct. Rep. 432;

Kansas City, M. & B. R. Co. v. Stiles, 242 U. S. 111, 119, 61 L. ed. 176, 187, 37 Sup. Ct. Rep. 58;

Kansas City, Ft. S. & M. R. Co. v. Kansas, 240 U. S. 227, 234, 60 L. ed. 617, 620, 36 Sup. Ct. Rep. 261;

Wisconsin & M. R. Co. v. Powers, 191 U. S. 379, 48 L. ed. 229, 24 Sup. Ct. Rep. 107;

Maine v. Grand Trunk R. Co. 142 U. S. 217, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163;

St. Louis-San Francisco R. Co. v. Middlekamp, 256 U. S. 226, 231, 65 L. ed. 905, 913, 41 Sup. Ct. Rep. 480;

International Shoe Co. v. Shartel, 279 U. S. 429, 433, 73 L. ed. 781, 785, 49 Sup. Ct. Rep. 380.

The United States Warehouse Act relates exclusively to the establishment by the Secretary of Agriculture of standards of quality and condition of agricultural products. The Mississippi statutes here under consideration do not undertake to enter the field of establishing the quality or condition of agricultural products stored by appellant.

Merchants Exchange v. State of Missouri, 248 U. S. 365, 63 L. ed. 300;

American Manufacturing Co. v. St. Louis, 250 U. S. 459, 63 L. ed. 1084.

So long as the cotton remained in the compress and until delivered to a carrier for shipment, it is under the direction and control of its owner and could be diverted from, or started on its way in interstate commerce.

From the authorities above cited, I think it is clear that cotton, while it is in storage or being compressed, is not in interstate commerce and cannot become a commodity in interstate commerce until it is delivered to and accepted by a carrier with its destination beyond the borders of the state. In other words, the compressing of the cotton is the final step in preparing the bales of cotton to become a commodity of interstate commerce.

Therefore, we respectfully submit that the appellant is not engaged in interstate commerce, but in a local and private business enterprise subject to state taxation.

POINT NO. II.

A COTTON WAREHOUSE AND COMPRESS LICENSED UNDER THE PROVISIONS OF THE "UNITED STATES WAREHOUSE ACT" IS NOT A FEDERAL INSTRUMENTALITY SO AS TO BE EXEMPT FROM STATE TAXATION.

The principle of immunity from state taxation of instrumentalities of the federal government has its inherent limitations. It is aimed at the protection of the government. The statute in question imposing the privilege tax is what it purports to be—a business tax on the privilege of engaging in the business of operating a cotton warehouse and compress. There is no purpose to tax instrumentalities of United States government. *McCulloch v. Maryland*, (U. S.) 4 L. ed. 579. 608.

See also *David Burnet, Commissioner of Internal Revenue v. A. T. Jergins Trust*, 77 L. ed. 550; *Indian Territory Illuminating Oil Co. v. Board of Equilization of Tulsa County, Oklahoma; Indian Territory Illuminating Oil Co. v. Board of County Commissioners, Payne County, Oklahoma*, 77 L. ed. 501.

The immunity from state taxation of federal instrumentalities does not extend to anything lying outside of or beyond governmental functions. *Indian Motor Cycle Co. v. United States*, 283 U. S. 270, 576, 579.

The mere fact that the appellant has made application to the Department of Agriculture and qualified as a bonded warehouseman under the United States Warehouse

Act, to fulfill a governmental purpose, does not make it immune from state taxation, when the compress and warehouse is held in private ownership and the privilege is exercised for private advantage. *Susquehanna Power Co. v. Tax Commission*, 283 U. S. 291, 75 L. ed. 1042.

It is apparent that the appellant in storing and compressing cotton, is not acting as an agent for the federal government. It acts with the government's permission and while it has received a privilege from the government, it is not a privilege to be exercised on behalf of the government. The tax is not upon the exertion of, and cannot be said to burden, any governmental functions. *Fox Film Corporation v. Doyal*, 286 U. S. 123.

The privilege is not laid upon the license granted by the Department of Agriculture, but upon the storing and compression of cotton, which it does at its own pleasure and exclusively for its own profit. *Utah Power & Light Co. v. Pfost*, 286 U. S. 165.

The fact that the appellant's warehouse is licensed and bonded under the United States Warehouse Act, does not exempt that business from the burdens of state taxation imposed by a statute otherwise valid. *Railroad Co. v. Penniston*, 18 Wall. 5, *Choctaw O. & G. Railroad Co. v. Mackey*, 256 U. S. 53; *Wilcutts v. Bunn*, 282 U. S. 216.

Thus, the permission granted by the federal government to a telephone company to use the military and post roads of the United States for its poles and wires "did not prevent the state from taxing the real or personal property

belonging to the company within its borders, or from imposing a license tax upon the right to do a lawful business within the state. *Williams v. Talladega*, 226 U. S. 404, *Western Union Telegraph Co. v. Mass.*, 125 U. S. 530; *Western Union Telegraph Co. v. Gottlieb*, 190 U. S. 412.

A bridge over a navigable stream between states is made a post road by an act of Congress, which also regulates the height of the bridge and the width of the spans, does not interfere with the right of the state to impose taxes upon the bridge company. *Henderson Bridge Co. v. Kentucky*, 166 U. S. 150, 41 L. ed. 953.

A state tax on the capital stock of a bridge company which maintains an interstate bridge is not a tax on a franchise conferred by the federal government, although the corporation has authority under an act of Congress to construct the bridge. *Keokuk and H. Bridge Co. v. Illinois*, 175 U. S. 626, 44 L. ed. 299.

The fact that a domestic railroad company was under the control of the federal government during the tax year does not exonerate it from a state franchise tax. *St. Louis-San Francisco R. R. Co. v. Middlecamp*, 256 U. S. 226.

Therefore, we respectfully submit that while the appellant is licensed under an act of Congress and has received a privilege thereby, it is not a privilege to be exercised on behalf of the government, and for that reason the Federal Compress and Warehouse Company is not an instrumentality of the federal government.

In the cases of *Broad River Power Company, Plaintiff, vs. Walter G. Query, et al,* constituting the South Carolina Tax Commission, *and Lexington Water Power Company, Plaintiff, vs. Walter G. Query, et al,* constituting the South Carolina Tax Commission, decided by this court on February 6, 1933, 77 L. ed. 489, not yet officially reportd, the plaintiffs appealed from decrees of the District Court of the United States for the Eastern District of South Carolina, dismissing suits to restrain the enforcement of a statute of the State of South Carolina imposing an excise or privilege tax on the production and sale of electric power.

In the case of Lexington Water Power Company, it was contended that it was generating current at a water power plant on the Saluda River, which plaintiff had constructed and operated pursuant to a license granted by the Federal Power Commission, under the "Federal Water Power Act," the same being Chapter 12, Title 16, of the United States Code, Annotated, and that the tax was an excise license or privilege tax upon a federal agency. The Supreme Court, in passing upon the question involved, used the following language

> "It is apparent, however, that the complainant in generating and selling power is not acting as an agent for the Government. It acts with the Government's permission, and while it may be said to have received a privilege from the Government, it is not a privilege to be exercised on behalf of the Government. The tax is not upon the exertion of, and cannot be said to burden, any governmental function. *Fox Film Corp. v. Doyal,* 286 U. S. 123, 130, 76 L. ed. 1010, 1015, 52 S. Ct. 546. The tax is not laid upon the license

granted by the Federal Water Power Commission but upon the production and sale of power which the company generates at its own pleasure and exclusively for its own profit. Notwithstanding the special characteristics of electrical energy, the company is engaged in producing and selling an article of trade. *Utah Power & Light Co. v. Pfost*, 286 U. S. 165, 180, 181, 76 L. ed. 1038, 52 S. Ct. 548. The product is property. The fact that a privilege has been received from the Federal Government does not exempt that property or the local business in producing and selling it from the burdens of taxation otherwise valid."

The latter case herein quoted from, we submit, is decisive of the question here involved because the Federal Compress and Warehouse Company is in no better position with reference to the tax imposed by the Mississippi statute than was the Lexington Water Power Company; the appellant here, merely being licensed under the provisions of the United States Warehouse Act, and enjoying a privilege thereby granted, not to be exercised on behalf of the government, but to be exercised at its own pleasure and exclusively for its own profit.

The decisions are uniform that articles of interstate commerce after same is brought within the confines of a state and become a part of the mass of property therein are legitimate objects on which the state can levy and collect ad valorem taxes. That being true the converse thereof is also true. While an article or commodity is still a part of the general mass of property within the state, where it is produced, it is a legitimate object on which the state can

levy and collect advalorem taxes. It then necessarily follows that a privilege tax upon the right to handle or deal with such commodities within the state, and before it ceases to be a part of the general mass of property within the state, may be levied and collected without contravening the Federal Constitution.

APPELLANTS PRINCIPAL AUTHORITIES COMMENTED UPON AND DIFFERENTIATED.

Appellant relies for a reversal of this cause, upon the principle announced by this court in that class of cases of which *Dahnke-Walker Mill Co. v. Bondurant*, 257 U. S. 280, 66 L. ed. 239, and *Lemke v. Farmers' Grain Company*, 258 U. S. 551, 66 L. ed. 458, are controlling. These cases, and those of the same class are not in point here for the reason that the question there involved was not a question of state taxation but state regulation. The distinction is clear and this court so recognized because, in *Lemke v. Farmers' Grain Company*, supra, the court made it clear and positive that the principle on which that case was decided, was not opposed to that line of decisions where, under presented facts, the court had occasion to define interstate commerce in cases where the right of state taxation was involved. The court recognizing that the principle there announced might be confused with that line of decisions where the question of state taxation was involved, took occasion to indicate a distinction by saying:

> "Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line between state and Federal authority under facts presented, which required a definition of inter-

state commerce where the right of state taxation was involved, or manufacture or commerce of an intrastate character w. s the subject of consideration. In those cases we have defined the beginning of interstate commerce as that time when goods begin their interstate journey by delivery to a carrier or otherwise, thus passing beyond state authority into the domain of Federal control. Cases of that type are not in conflict with principles recognized as controlling here."

There is also another distinction in that the act was a regulatory act, which authorized the state officer to fix and determine the price to be paid for grain which was bought, shipped and sold in interstate commerce. The statute was struck down because of the price fixing feature of the act which the court said was a vital part of the statutory scheme, and "apparent that, without these sections, the state legislature would not have passed the act."

In *Dahnke-Walker Mill Co. v. Bondurant,* supra, the State of Kentucky had a statute which prescribed the conditions on which corporations of other states might do business in that state. The plaintiff was a corporation of Tennessee, and engaged in operating flour and feed mills in that state. The defendant was a resident of the state of Kentucky, and engaged in farming in that state. The parties had entered into a contract for the sale and delivery of a crop of wheat. A small part of the crop was delivered as agreed, but delivery of the rest was refused. A payment had been advanced on the crop which covered more wheat than was delivered. An action was brought in the state court of Kentucky on the contract. The de-

fense interposed was, that the plaintiff had not complied with the statute of Kentucky prescribing the condition upon which it, as a corporation, might do business in that state, and that the contract was therefore, not enforceable. The contract provided for delivery of the wheat on board the cars in Kentucky, which fact was the turning point in the litigation. Mr. Justice Van Devanter, in delivering the opinion of the court, used the following language:

> "The state court, stressing the fact that the contract was made in Kentucky and was to be performed there, put aside the further facts that the delivery was to be on board the cars, and that the plaintiff, in continuance of its prior practice, was purchasing the grain for shipment to its mill in Tennessee. We think the facts so neglected had a material bearing and should have been considered. They showed that what otherwise seemed an intrastate transaction was a part of interstate commerce."

When the court said, "We think the facts so neglected had a material bearing and should have been considered. They showed that what otherwise seemed an intrastate transaction was a part of interstate commerce," what fact was the court referring to? Evidently, it was referring to the fact that the wheat, under the contract, was sold F. O. B. cars in Kentucky, and that this condition in the contract made the transaction a part of interstate commerce, which is in line with the reasoning of this court, to the effect that when a commodity is loaded on cars and delivered to a carrier for transportation to another state, the commodity is then in the channel of interstate commerce and beyond state regulation. Had it not been for the provision in the con-

tract that the delivery of the wheat was to be on board the cars, the transaction would have been an intrastate transaction, and the decision of this court in this case would have been different.

The line of cases above referred to, do not deal with the power of the state to tax businesses and instrumentalities which may be engaged in preparing or storing articles of trade, which ultimately may enter into and become a commodity in interstate commerce, but deals with the power of a state to prevent or hinder an engagement in interstate commerce within the limits of the state without her consent and license.

Appellant also relies upon the principle first announced in *Brown v. Maryland*, 12 Wheat. 419, 446, 447, 6 L. ed. 678, 688, and decisions subsequent thereto. All of the cases subsequent to the case of *Brown v. Maryland*, supra, show that the resemblance between imports and exports, and articles in original packages, in interstate commerce with respect to being immune from taxation fails. Immunity attaches to imports or exports before sale, whereas the immunity of an article because of its relation to interstate commerce depends on the question of whether or not the tax challenged, regulates or burdens interstate commerce.

In the case at bar we are not dealing with the storage or compression of cotton as an import or as an export. The privilege tax imposed by the state statute is not in effect a tax upon the right to store and compress interstate ship-

ments of cotton itself, but is a privilege tax upon a local business which is consummated within the state.

Cotton does not require storage in a warehouse or compression by a compress of the character here involved, as a necessary prerequisite to becoming an article of interstate or foreign commerce.

In *Woodruff v. Parham*, 8 Wall. 123, 19 L. ed. 382, the distinction is drawn between the immunity from taxation of articles of imports and articles in their relation to interstate commerce. In that case, Woodruff, an auctioner, located in the City of Mobile, Alabama, received in the general course of business for himself, and as consignee and agent for others, merchandise from Alabama and other states, and sold such articles in unbroken packages. The City of Mobile, under its charter, levied a uniform tax on real and personal property on sales at auction, on sales of merchandise, and the capital employed in businesses in that city. Woodruff refused to pay the tax on sales of merchandise from other states in original packages, and contended that the imposition of the tax contravened the provisions of the Federal Constitution. The court held that the tax did not discriminate against the sale of goods from other states and was not "an attempt to fetter commerce among the states."

The same principle was announced and applied in *Brown v. Houston*, 114 U. S. 622. Also, in *American Steel & Wire Company v. Speed*, 192 U. S. 522, 48 L. ed. 547.

All the authorities cited and relied on by appellant deal

either, (1) with questions involving the right of the state to tax imports, or (2) where an attempt was made by the state to regulate interstate commerce as distinguished from the right of the state to tax a local business enterprise, and in nowise are such authorities controlling under the facts involved in this case.

The only cases cited by appellant, which are applicable to the issues and facts involved in this case, are *Southern Pacific v. Calexico*, 288 Fed. 642; *M'Fadden v. A. G. S. R. Co.*, 241 Fed. 565, and *Crescent Cotton Oil Co. v. Mississippi*, 257 U. S. 136, 66 L. ed. 170. These cases, however, are adverse in principle to appellant's contentions and are authority for the position contended for by appellee.

CONCLUSION

In conclusion we submit (1) that the storage and compression of cotton is a process essentially local in character and complete in itself; that while it is true that practically all cotton grown in Mississippi is sold and shipped in interstate commerce, yet such cotton does not enter the channel of interstate commerce until "committed to a common carrier for transportation to another state." The process of storage and compression being completed before the cotton is committed to a carrier for transportation out of the state. The warehouse and compress, of the appellant, is not so linked with the transmission of cotton as to make it an inseparable part of a transaction in interstate commerce. Cotton warehouses and compresses are used as instruments by those engaged in state as well as interstate commerce, but they are no more necessarily a part of commerce itself

than the horse, wagon or motor truck by which cotton is hauled to such warehouses and compresses. The compress and warehouse is no part of the channel through which cot- of interstate commerce; therefore, the warehouse and compress of appellant being no part of the channel of interstate commerce, it is not an instrumentality engaged in interstate commerce, and as such exempt from state taxation.

(2) The appellant does not act as an agent for the federal government; performs no federal function; exercises no privileges on behalf of the federal government; but on the other hand, is operated as a private enterprise and for individual profit. While this is done with the permission of the federal government, it is without any aim toward the protection of the government; therefore, the tax imposed by the Mississippi statute is not upon the exercise of any governmental function so as to be a tax upon an instrumentality of the federal government.

Therefore, for the reasons above stated, we respectfully submit that the judgment of the Supreme Court of the State of Mississippi should be affirmed.

GREEK L. RICE, Attorney General
of the State of Mississippi.
Of Counsel for Appellee.

APPENDIX "A"

Chapter 88 of General Laws of Mississippi 1930.

SECTION 3. PRIVILEGE TAXES IMPOSED.—Every person desiring to engage in any business, or exercise any privilege hereinafter specified, shall first, before commencing same, apply for, pay for, and procure from the proper officer a privilege license authorizing him to engage in the business, or exercise the privilege specified therein; and the amount of tax shown in the following schedules is hereby imposed for the privilege of engaging and/or continuing in the businesses set out therein.

Section 57. COTTON COMPRESSES.—Upon each person operating a cotton compress, as follows:

Where the number of bales of cotton compressed per annum is more than 100,000 bales	$1,000.00
Where the number of bales of cotton compressed per annum is 100,000 bales, or less, and more than 75,000 bales	800.00
Where the number of bales of cotton compressed per annum is 75,000 bales, or less, and more than 50,000 bales	600.00
Where the number of bales of cotton compressed per annum is 50,000 bales, or less, and more than 40,000 bales	500.00
Where the number of bales of cotton compressed per annum is 40,000 bales , or less, and more than 30,000 bales	400.00
Where the number of bales of cotton compressed per annum is 30,000 bales, or less, and more than 20,000 bales	300.00

Where the number of bales of cotton compressed per annum is 20,000 or less 200.00

Section 63. COTTON WAREHOUSES.—Upon each person operating a warehouse for the storage of cotton, whether in conjunction with a compress or not, as follows:

Where the storage capacity of same is 50,000 or more bales $150.00

Where the storage capacity of same is less than 50,000 and more than 35,000 bales 100.00

Where the storage capacity of same is 35,000 bales or less, and more than 20,000 ..... 75.00

Where the storage capacity of same is 20,000 bales, or less, and more than 10,000 bales 50.00

Where the storage capacity of same is 10,000 bales or less, and more than 5,000 bales 40.00

Where the storage capacity of same is 5,000 bales or less, and more than 2,000 bales 20.00

Where the storage capacity of same is 2,000 bales or less 10.00

Section 242. PENALTIES.—Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, and on conviction thereof shall be fined not more than $500.00 or imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment in the discretion of the court within the limitations aforesaid; and such fine and imprisonment shall be in addition to any other penalty imposed by any particular section of this chapter (act). The courts in the county in which the offender resides, or if a company, in which it carries on business, shall have jurisdiction to enforce this section.

APPENDIX "B"

The hereinafter cited case having been decided by the United States Supreme Court since the preparation of the original brief in this case, it is noted herein as Appendix "B."

State of Minnesota v. George Blasius, being No. 7 decided November 6, 1933, and not yet officially reported.

In this case the court held that where cattle were shipped into a state and there sold to a livestock trader, who held them for resale in the course of his business of selling cattle, both within and without the state, such cattle were no longer in transit or in the course of interstate commerce, but acquired a situs in and became a part of the general mass of property within the state, subject to the state's taxing power.

The gist of the opinion is that such cattle were not immune from a tax imposed by the state on the ground that they were being moved in interstate commerce. In this case the court reviewed many of the authorities cited in this brief, and reaffirmed the principles first announced by this court in *Coe v. Errol*, 116 U. S. 572, and consistently adhered to in subsequent decisions.

16

SUPREME COURT OF THE UNITED STATES.

No. 166.—October Term, 1933.

Federal Compress & Warehouse Company and New Amsterdam Casualty Company of New York, Appellants, *vs.* E. R. McLean, Sheriff and Tax Collector, et al.	Appeal from the Supreme Court of the State of Mississippi.

[January 8, 1934.]

Mr. Justice Stone delivered the opinion of the Court.

This case comes here on appeal, under § 237 of the Judicial Code, for review of a judgment of the Supreme Court of Mississippi upholding a state excise tax assailed as a forbidden imposition upon a federal instrumentality, and as infringing the commerce clause of the Federal Constitution. — Miss. —. Sections 3, 57, 220, 221, 225, 242, of c. 88, of the General Laws of Mississippi of 1930 exact an annual license tax for the privilege of operating a cotton compress which is graduated according to the number of bales of cotton compressed per annum. Sections 3 and 63 levy a similar additional tax upon each person operating a warehouse, whether in conjunction with a compress or not, which is graduated according to the storage capacity of the warehouse.

Appellant, a Delaware corporation which maintains and operates a cotton warehouse and compress at Cleveland, Mississippi, brought the present suit to recover taxes imposed with respect to both classes of business, paid under protest to appellee, the tax collector, in 1932. The case was tried on an agreed statement of facts, from which it appears that the appellant is licensed by the Secretary of Agriculture to conduct a warehouse for the storage of agricultural products under the provisions of the United States Warehouse Act of August 11, 1916, c. 313, 39 Stat. 486, as amended, c. 10, Tit. 7, U. S. C. A. Appellant has given a bond for the faithful performance of the duties which are exacted of a licensed warehouseman by the Act and by the rules and regulations of the Secretary of

Agriculture, and its business as a warehouseman is subject to his inspection and control as the statutes and regulations provide.

Cleveland is a shipping point for baled cotton in interstate and foreign commerce and is a market in which cotton is purchased by brokers and dealers from those who produce it within the state. The purchases are made for resale or to fulfill contracts for sale of cotton without the state. In the usual course of business the purchased cotton, after it is ginned, is transported to appellant's warehouse for storage and compression, about 25% arriving by automobile truck or wagon and the remainder by rail over the line of the single railroad serving Cleveland. Upon delivery appellant issues its negotiable warehouse receipts for the cotton, in the form and manner provided by the United States Warehousing Act. The right to demand delivery of the cotton or otherwise control its disposition is reserved to the holders of the receipts. A small part of the stored cotton, from 1% to 10%, is resold within the state to buyers who sell it to purchasers without the state, but all except a negligible part of it is ultimately shipped to points outside the state. Upon shipping orders given by the holders of the warehouse receipts, appellant compresses the cotton into bales of standard weight and size, suitable for shipment, and delivers them to the rail carrier for interstate transportation. The movement of the cotton out of the warehouse is directed by the owners of it who hold the warehouse receipts. Its destination is not determined until the owner gives shipping instructions to appellant and shipment is not made until surrender of the warehouse receipts. The compress charges are paid by the carrier, which it adds to the charge for carriage and in the case of cotton brought to the warehouse by rail carriage the through interstate rail rate is applied from the point of origin to destination instead of the combination rate which is the sum of the intrastate rate to Cleveland and the interstate rate from that point to destination. The identity of the cotton is not preserved in reshipping it and substitution is permitted with the understanding that the through rate from point of origin to destination without the state shall not be affected.

By written agreement with the railroad company appellant is designated as the agent of the railroad to receive the cotton from and deliver it to the railroad and to load and unload cotton upon and from its cars. The agreement also provides for the use of the warehouse by the railroad as a cotton depot.

Upon this state of facts appellant argues that the tax upon the business both of warehousing and of compressing the cotton is a forbidden burden on interstate commerce, and that the warehouse tax is unconstitutional because a direct tax upon a business conducted by appellant as a federal instrumentality, designated as such by its license under the United States Warehousing Act.

1. It is clear that by all accepted tests the cotton, while in appellant's warehouse, has not begun to move in interstate commerce and hence is not a subject of interstate commerce immune from local taxation. When it comes to rest there, its intrastate journey, whether by truck or by rail, comes to an end and although in the ordinary course of business the cotton would ultimately reach points outside the state, its journey interstate does not begin and so it does not become exempt from local tax until its shipment to points of destination outside the state. Before shipping orders are given, it has no ascertainable destination without the state, and in the meantime, until surrender of the warehouse receipts, it is subject to the exclusive control of the owner. Property thus withdrawn from transportation, whether intrastate or interstate, until restored to a transportation movement interstate, has often been held to be subject to local taxation. *Coe* v. *Errol*, 116 U. S. 517; *Bacon* v. *Illinois*, 227 U. S. 504; *General Oil Co.* v. *Crain*, 209 U. S. 211; *Susquehanna Coal Company* v. *South Amboy*, 228 U. S. 665, 669; *Minnesota* v. *Blasius*, decided November 6, 1933; cf. *Arkadelphia Milling Co.* v. *St. Louis Southwestern Ry. Co.*, 249 U. S. 134.

A non-discriminatory tax upon the business of storing and compressing the cotton, which is not itself the subject of a movement in interstate commerce, is not forbidden. Most articles, before their shipment in interstate commerce, have had work done upon them which adapts them to the needs of commerce and prepares them for safe and convenient transportation, but that fact has never been thought to immunize from local taxation either the articles themselves or those who have manufactured or otherwise prepared them for interstate transportation. *American Manufacturing Co.* v. *St. Louis*, 250 U. S. 459; *Crescent Cotton Oil Co.* v. *Mississippi*, 257 U. S. 129; *Oliver Iron Mining Co.* v. *Lord*, 262 U. S. 172; *Hope Natural Gas Co.* v. *Hall*, 274 U. S. 284; *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165. Here the privilege taxed is exercised before

interstate commerce begins, hence the burden of the tax upon the commerce is too indirect and remote to transgress constitutional limitations. See *Nashville, Chattanooga & St. Louis Railway* v. *Wallace,* 288 U. S. 249. The case, therefore, stands on a footing different from those in which local regulations of the business of purchasing a commodity within and shipping it without the state have been deemed to impede or embarrass interstate commerce in those commodities. *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282; *Lemke* v. *Farmers Grain Co.,* 258 U. S. 50.

The fact that appellant's contract with the interstate rail carrier has designated appellant as the carrier's agent and appellant's warehouse as the carrier's depot cannot alter the legal consequences of what is actually done with the cotton by its owners or of their power of control over it, or of the actual course of dealing with it by appellant. It is not within the power of the parties, by the descriptive terms of their contract, to convert a local business into an interstate commerce business protected by the interstate commerce clause. See *Merchants Warehouse Company* v. *United States,* 283 U. S. 501, 507-508; *Superior Oil Co.* v. *Mississippi,* 280 U. S. 390; *Browning* v. *City of Waycross,* 233 U. S. 16, 23.

2. Appellant's license under the United States Warehousing Act did not confer upon it immunity from state taxation, for neither the appellant nor its business was, by force of the license, converted into an agency or instrumentality of the federal government. The Warehousing Act confers upon licensees certain privileges and secures to the national government, by means of the licensing provisions, a measure of control over those engaged in the business of storing agricultural products who find it advantageous to apply for the license. The government exercises that control in the furtherance of a governmental purpose to secure fair and uniform business practices. But the appellant, in the enjoyment of the privilege, is engaged in its own behalf, not the government's, in the conduct of a private business for profit. It can no longer be thought that the enjoyment of a privilege conferred by either the national or a state government upon the individual, even though to promote some governmental policy, relieves him from the taxation by the other of his property or business used or carried on in the enjoyment of the privilege or of the profits derived from it. *Susquehanna Power Company* v. *Tax*

Commission, 283 U. S. 291; *Fox Film Corporation* v. *Doyal*, 286 U. S. 123; *Broad River Power Company* v. *Query*, 288 U. S. 178, 180.

The fact that the license is used also as a means of government control of appellant's business does not call for a different conclusion. The national government has not assumed to tax the business or to exercise any control over the taxation of it by the state. The state does not tax the license itself and the tax upon petitioner's business, applied without discrimination to all similar businesses whether licensed or not, does not impair the control which the federal authority has chosen to exert. The mere extension of control over a business by the national government does not withdraw it from a local tax which presents no obstacle to the execution of the national policy. Compare *Susquehanna Power Company* v. *Tax Commission, supra; Broad River Power Company* v. *Query, supra.* See *Willcuts* v. *Bunn*, 282 U. S. 216, 226, 230.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.